

apply. One party cannot “unilaterally modify or reduce the right-of-way in a manner or extent that is inconsistent with the intention of the parties as gleaned from the language of the deed granting the right-of-way.” *Miller*, 377 Md. at 351, 833 A.2d at 855 (citing *Chevy Chase Land Co. v. United States*, 355 Md. 110, 123, 733 A.2d 1055, 1062 (1999)).

Thus, an easement between a dominant and servient tenement cannot be unilaterally modified or reduced in a manner or extent inconsistent with the intentions of the parties shown from the language of the deed creating the easement. *See Miller*, 377 Md. at 350, 833 A.2d at 544. Since the Original Easement provided an express two-way easement for the benefit of the Plaintiff’s property, the Amended Declaration is unenforceable because it unilaterally restricts access and only permits one-way egress. The Original Easement, Recital B, paragraph 2 entitles Defendant to relocate the easement so long as the relocated easement “shall continue to provide a use in common right of way for vehicular ingress and egress.” The Amended Declaration restricts this access to just egress, violating the condition that the relocated easement provide a right of way for ingress *and* egress. Because this change was neither consensual nor consistent with the language of the Original Easement, the Amended Easement is invalid. *See id.*

CONCLUSION

The October 8, 2015 Declaration of Easement agreement is an unambiguous express easement binding upon Plaintiff and Defendant. It grants ingress and egress across Parcel 12 to and from the traffic signal for the benefit of Parcel 17. The September 5, 2017 Amended Declaration of Easement attempts to unilaterally restrict this access by only permitting egress. Therefore, the Amended Declaration is invalid. For these reasons, the court will grant Plaintiff partial Summary Judgment.

Date

Donna M. Schaeffer, Judge

RIVA, LLC,	*	IN THE
Plaintiff	*	CIRCUIT COURT FOR
v.	*	ANNE ARUNDEL COUNTY
JOE THE GRINDER, RIVA ROAD, LLC,	*	MARYLAND
Defendant	*	CASE No.: C-02-CV-19-000583
* * * * *		

ORDER

For the reasons set forth in the Opinion filed herewith, it is, by the Circuit Court for Anne Arundel County, Maryland,

ORDERED that Plaintiff's Motion for Partial Summary Judgment is hereby **GRANTED**; and it is

DECLARED that the Amended Declaration of Easement dated September 5, 2017 and filed in the Land Records of Anne Arundel County, Maryland, in Book 31341, page 353 is invalid and of no force or effect.

Date

Donna M. Schaeffer, Judge

Applicant Details

First Name	Sara
Last Name	Maier
Citizenship Status	U. S. Citizen
Email Address	semaier@uchicago.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>1617 E. 50th Place, Apt. 7E</div> <div>City</div> <div>Chicago</div> <div>State/Territory</div> <div>Illinois</div> <div>Zip</div> <div>60615</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	(260) 494-7839

Applicant Education

BA/BS From	Ball State University
Date of BA/BS	May 2019
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 4, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	The University of Chicago Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Rappaport, John
jrappaport@uchicago.edu
773-834-7194
Case, Mary Anne
macase@law.uchicago.edu
773-702-9494

References

Mary Anne Case,
(773) 834-3867
macase@law.uchicago.edu
John Rappaport,
(773) 834-7194
jrappaport@uchicago.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

1617 E. 50th Place, Apt. 7E
Chicago, IL 60615
(260) 494-7839
semaier@uchicago.edu

June 4th, 2021

The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Mehige, Jr. U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Magistrate Judge Hanes:

I am a second-year law student at the University of Chicago Law School, and I am applying for a clerkship in your chambers for the 2022 term. I would like to clerk in your chambers because I value the chance to clerk for a magistrate judge, as I will practice criminal law after clerking.

I want to clerk because I plan to work as a public defender, ultimately representing capital defendants. Eventually, I would like to move into impact litigation addressing prison reform, as this will combine my interests in criminal and constitutional law. I want to provide the best possible representation for my future clients; clerking will help me do so. Clerking will allow me to understand how judges make their decisions and interpret the law—valuable knowledge for a trial lawyer. Additionally, clerking for a federal judge will let me expand my understanding of constitutional and statutory interpretation; interpretive issues fascinate me, especially regarding criminal law questions. The behind-the-scenes nature of clerking is an invaluable experience that will make me a better advocate for my future clients.

I also enjoy legal research and writing, and I am eager for the uniquely intensive research and writing opportunities clerking offers. As a volunteer with the Southern District of Illinois Office of the Public Defender, I wrote several memos covering compassionate release. My first-year summer, I drafted proposed state legislation for the Texas Fair Defense Project and completed sections of appellate briefs for the Palm Beach County Office of the Public Defender. This past year, I completed a comment for *The University of Chicago Law Review*, evaluating solutions to a circuit split regarding the State's ability to use a defendant's pre-*Miranda* warning silence as evidence of the defendant's guilt. I am eager to apply my research and writing skills by clerking.

I have enclosed a resume, transcript, and writing sample. Letters of recommendation from Professors Mary Ann Case and John Rappaport will arrive separately. Please do not hesitate to let me know if you require additional information.

Sincerely,

/s/ Sara Maier

Sara Maier

SARA MAIER

1617 E. 50th Place, 7E | Chicago, IL 60615 | (260) 494-7839 | semaier@uchicago.edu

EDUCATION

The University of Chicago Law School, Chicago, Illinois

Juris Doctor, expected June 2022

- Journal: *The University of Chicago Law Review*, Staff Member
- Organizations: Public Interest Law Society, Vice President; OutLaw, Event Coordinator; American Constitution Society, 2L Representative; Law Women's Caucus, 2L Representative

Ball State University, Muncie, Indiana

Bachelor of Arts in Political Science with minors in Philosophy & Literature, *summa cum laude*, May 2019

- Thesis: *The Racial Implications of the Social Contracts of Locke, Rousseau, and Rawls*
- Journal: *Stance: An International Undergraduate Philosophy Journal*, Associate Editor
- Honors: Academic Honors in Political Science, Outstanding Senior in Political Science, Academic Honors in Writing, Dean's List every semester
- Organizations: Debate Team, Captain; Arabic Club, Secretary; Feminists for Action; Honors College

EXPERIENCE

Alaska Public Defender Agency, Palmer, Alaska

Certified Legal Intern, June to August 2021

- Represents around sixty misdemeanor clients throughout the pre-trial and trial process

Louisiana Capital Assistance Center, New Orleans, Louisiana

Remote legal volunteer, March 2021

- Organized data covering jury pool demographics in multiple federal jury districts

Texas Fair Defense Project, Austin, Texas

Remote legal intern, July to September 2020

- Completed a memo summarizing attachment of counsel and critical stages under Texas caselaw
- Drafted a statehouse bill codifying a defendant's right to a hearing on a motion for substitute counsel
- Conducted initial intake over the phone for potential clients
- Guided clients through the driver's license renewal process by accessing driver's records, completing financial affidavits, and writing letters to judges

Palm Beach County Office of the Public Defender, West Palm Beach, Florida

Remote legal intern, June to July 2020

- Created memos analyzing prejudicial evidence and competency hearings
- Wrote sections of appellate briefs arguing for a client's right not to be imprisoned due to poverty and that the State failed to properly authenticate a piece of evidence

Southern District of Illinois Office of the Federal Public Defender, East St. Louis, Illinois

Remote legal volunteer, March to April 2020

- Conducted research on compassionate release cases relating to the COVID-19 pandemic
- Evaluated issues of appellate procedure and criminal procedure

Mark Hinton for Indiana State House District 39, Carmel, Indiana

Intern, March to August 2018

- Wrote policy briefings for state statutes on public education, gun control, opioid use, and child labor

INTERESTS

Political philosophy, metaethics, art history, painting, miniatures, Shakespeare, yoga, vegetarian cooking



Name: Sara E Maier
Student ID: 12250420

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2019
Current Status: Active in Program
J.D. in Law

External Education

Ball State University
Muncie, Indiana
Bachelor of Arts 2019

EP or EF (Emergency Pass/Emergency Fail) grades are awarded in response to a global health emergency beginning in March of 2020 that resulted in school-wide changes to instruction and/or academic policies.

Beginning of Law School Record

		Autumn 2019		
Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law Richard McAdams	3	3	178
LAWS 30211	Civil Procedure I William Hubbard	3	3	177
LAWS 30311	Criminal Law Jonathan Masur	3	3	177
LAWS 30611	Torts Jennifer Nou	3	3	179
LAWS 30711	Legal Research and Writing Patrick Barry Roseanna Sommers	1	1	178

		Winter 2020		
Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law John Rappaport	3	3	177
LAWS 30411	Property Lee Fennell	3	3	EP
LAWS 30511	Contracts Eric Posner	3	3	EP
LAWS 30611	Torts Adam Chilton	3	3	179
LAWS 30711	Legal Research and Writing Patrick Barry Roseanna Sommers	1	1	178

		Spring 2020		
Course	Description	Attempted	Earned	Grade
LAWS 30221	Civil Procedure II Alison LaCroix	3	3	EP
LAWS 30411	Property Lee Fennell	3	3	EP
LAWS 30511	Contracts Eric Posner	3	3	EP
LAWS 30712	Lawyering: Brief Writing, Oral Advocacy and Transactional Skills Roseanna Sommers	2	2	EP
LAWS 47301	Criminal Procedure II: From Bail to Jail Alison Siegler	3	3	EP

Summer 2020
Honors/Awards
The University of Chicago Law Review, Staff Member 2020-21

		Autumn 2020		
Course	Description	Attempted	Earned	Grade
LAWS 41601	Evidence Geoffrey Stone	3	3	177
LAWS 47201	Criminal Procedure I: The Investigative Process Sharon Fairley	3	3	175
LAWS 53704	Hate Crime Law Juan Linares	3	3	179
LAWS 94110	The University of Chicago Law Review Anthony Casey	2	2	P

		Winter 2021		
Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure William Baude	3	3	180
LAWS 46101	Administrative Law Jennifer Nou	3	3	177
LAWS 53365	LGBT Law Camilla Taylor	3	0	
LAWS 63312	Workshop: Regulation of Family, Sex, and Gender Mary Anne Case	1	0	IP
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P



Name: Sara E Maier
Student ID: 12250420

University of Chicago Law School

Spring 2021					
Course	Description		Attempted	Earned	Grade
LAWS 40301	Constitutional Law III: Equal Protection and Substantive Due Process Genevieve Lakier		3	0	
LAWS 40501	Constitutional Law V: Freedom of Religion Mary Anne Case		3	0	
LAWS 41101	Federal Courts Alison LaCroix		3	3	182
LAWS 63312	Workshop: Regulation of Family, Sex, and Gender Mary Anne Case		1	0	IP
LAWS 94110	The University of Chicago Law Review Meets Substantial Research Paper Requirement		0	0	P
Designation:			Anthony Casey		

End of University of Chicago Law School

DATE PRINTED: 06/14/21 PAGE: 1 SARA E MAIER
 SOCIAL SECURITY NUMBER: XXX-XX-0024 CARROLL HIGH SCHOOL
 STUDENT NUMBER: XXX-XX-645 FORT WAYNE, IN ORDER #: 53722347 1

BSU CREDITS						COMM 210 FUNDAMENTALS OF PUBLIC COMM		3.00	12.000	A		
						POLS 375 MEDIA AND POLITICS		3.00	12.000	A		
						**** DEAN'S LIST ****						
DEPT	CRS	DESCRIPTION	HR/AT	QT/PT	GR	HR/AT	HR/PS	HR/ER	GPA HOURS	QT/PT	GPA	
FALL TERM 15-16						6.0	6.0	6.0	6.0	24.000	4.000	
HONR	201	INQUIRIES IN THE ANCIENT WORLD	3.00	12.000	A	U-ACCUM	78.0	78.0	78.0	301.003	3.909	
HONR	202	MIDDLE AGES RENAISSA ENLIGHTNMT	3.00	12.000	A	FALL TERM 17-18						
HONR	100	FRESHMAN SEMINAR	1.00	0.000	CR	AR	201	INTERMEDIATE ARABIC 1		4.00	16.000	A
PHIL	200	SYMBOLIC LOGIC	3.00	12.000	A	ENG	464	SHAKESPEARE		3.00	12.000	A
POLS	293	INTERNATIONAL RELATIONS	3.00	11.001	A-	ENG	346	STUDIES 19TH CEN AMER LIT		3.00	12.000	A
THEA	100	INTRO TO THEATRE	3.00	9.000	B	PHIL	302	HISTORY OF MODERN PHILOSOPHY		3.00	12.000	A
**** DEAN'S LIST ****						POLS	237	STATE AND LOCAL POLITICS		3.00	12.000	A
						POLS	210	POL SCI RES METHODS		3.00	12.000	A
						**** DEAN'S LIST ****						
						HR/AT	HR/PS	HR/ER	GPA HOURS	QT/PT	GPA	
U-TERM			16.0	16.0	16.0	15.0	56.001	3.733				
U-ACCUM			16.0	16.0	16.0	15.0	56.001	3.733				
SPRING TERM 15-16						19.0	19.0	19.0	19.0	76.000	4.000	
CCIM	210	PROFESSIONAL DEVELOPMENT	1.00	4.000	A	U-ACCUM	97.0	97.0	97.0	377.003	3.927	
HONR	203	INQUIRIES 19TH 20TH 21ST CENT	3.00	12.000	A	SPRING TERM 17-18						
I HONR	390	ROME AND FLORENCE	3.00	12.000	A	AR	202	INTERMEDIATE ARABIC 2		4.00	16.000	A
JOUR	101	MEDIA AND AMERICAN SOCIETY	3.00	11.001	A-	ENG	494	QUEER LIT AND QUEER THEORY		3.00	12.000	A
NEWS	108	FINDING GREAT STORYTELLERS	1.00	4.000	A	PHIL	235	BIOETHICS		3.00	12.000	A
NEWS	131	MULTIMEDIA: STILLS	1.00	3.000	B	POLS	385	POLITICS OF THE EUROPEAN UNION		3.00	12.000	A
NEWS	132	MULTIMEDIA: AUDIO	1.00	3.667	A-	POLS	444	CONSTITUTIONAL LIBERTIES		3.00	12.000	A
NEWS	105	JOURN STORYTELLING: INTRO	2.00	8.000	A	**** DEAN'S LIST ****						
NEWS	133	MULTIMEDIA: VIDEO	1.00	3.667	A-							
**** DEAN'S LIST ****						HR/AT	HR/PS	HR/ER	GPA HOURS	QT/PT	GPA	
						16.0	16.0	16.0	16.0	64.000	4.000	
U-TERM			32.0	32.0	32.0	31.0	117.336	3.785				
U-ACCUM			32.0	32.0	32.0	31.0	117.336	3.785				
SUMMER TERM 15-16						6.0	6.0	6.0	6.0	24.000	4.000	
FCS	135	FINANCIAL LITERACY	1.00	4.000	A	U-ACCUM	119.0	119.0	119.0	465.003	3.940	
HIST	150	THE WEST IN THE WORLD	3.00	12.000	A	SUMMER TERM 17-18						
HONR	299X	ROME & FLORENCE FIELD STUDY	0.00	0.000	A	POLS	479	PRACT EXP AMER GOV AND LAW		3.00	12.000	A
						POLS	404	SR THES IN GOV AND POLS		3.00	12.000	A
						HR/AT	HR/PS	HR/ER	GPA HOURS	QT/PT	GPA	
U-TERM			4.0	4.0	4.0	4.0	16.000	4.000				
U-ACCUM			36.0	36.0	36.0	35.0	133.336	3.809				
FALL TERM 16-17						14.0	14.0	14.0	14.0	56.000	4.000	
AR	101	BEGINNING ARABIC 1	5.00	20.000	A	U-ACCUM	133.0	133.0	133.0	521.003	3.946	
HONR	189	INQUIRIES IN GLOBAL STUDIES	3.00	12.000	A	FALL TERM 18-19						
I HONR	390	INVESTIGATING THE HUMAN	3.00	12.000	A	ENG	365	19TH CEN BRIT LIT		3.00	12.000	A
JOUR	103	INTRODUCTION TO VISUAL COMM	3.00	12.000	A	PPW	103	WALKING		2.00	8.000	A
NEWS	120	NEWSGATHERING: SOURCING	2.00	8.000	A	PHIL	420	CONTEMP ETHICAL THRY AND PROB		3.00	12.000	A
NEWS	240	CURRENT ISSUES 1	1.00	4.000	A	I PHIL	400	IMMERS EXPERIENTIAL LEARNING		3.00	12.000	A
NEWS	109	FINDING ETHIC LEGAL PRINCIPLES	1.00	3.667	A-	POLS	443	AMERICAN CONSTITUTIONAL LAW		3.00	12.000	A
WPP	392	WRITING PROFICIENCY EXAM	0.00	0.000	CR	**** DEAN'S LIST ****						
**** DEAN'S LIST ****						HR/AT	HR/PS	HR/ER	GPA HOURS	QT/PT	GPA	
						18.0	18.0	18.0	18.0	71.667	3.961	
U-TERM			54.0	54.0	54.0	53.0	205.003	3.867				
U-ACCUM			54.0	54.0	54.0	53.0	205.003	3.867				
SPRING TERM 16-17						12.0	12.0	12.0	12.0	45.999	3.833	
AR	102	BEGINNING ARABIC 2	5.00	20.000	A	U-ACCUM	145.0	145.0	145.0	567.002	3.937	
HONR	199	CONTEMP AMERICAN CIVILIZATION	3.00	12.000	A	SUMMER TERM 18-19						
HONR	479	HONORS PRACTICAL EXPERIENCE	1.00	4.000	A	COMM	380	PRACTICUM IN COMM STUDIES		3.00	12.000	A
POLS	280	COMPARATIVE POLITICAL SYSTEMS	3.00	12.000	A	HONR	298	INQUIRIES IN LIFE SCIENCES		3.00	9.999	B+
POLS	342	PROBLEMS IN PUBLIC POLICY	3.00	12.000	A	I PHIL	400	IMMERS EXPERIENTIAL LEARNING		3.00	12.000	A
POLS	313	MOD WEST POL THOUGHT	3.00	12.000	A	POLS	615	WESTERN POLITICAL THEORY		3.00	12.000	A
**** DEAN'S LIST ****						**** DEAN'S LIST ****						
						HR/AT	HR/PS	HR/ER	GPA HOURS	QT/PT	GPA	
U-TERM			18.0	18.0	18.0	18.0	72.000	4.000				
U-ACCUM			72.0	72.0	72.0	71.0	277.003	3.901				
SUMMER TERM 16-17						**** DEAN'S LIST ****						

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:										
BALL STATE ADVANCED STANDING										
MUNCIE, IN										
ADV STANDING										
TRANSFER	BSU									
DEPT	CRS	DEPT	CRS	DESCRIPTION	HR/ER					
PP	CREDIT	ENG	206	READING LITERATURE	3.00					
Test	ENG	103	RHETORIC AND WRITING	3.00						

SARA E MAIER
SOCIAL SECURITY NUMBER: XXX-XX-0024
STUDENT NUMBER: XXX-XX-645
CARROLL HIGH SCHOOL
FORT WAYNE, IN
ORDER #: 53722347 1

DATE PRINTED: 06/14/21 PAGE: 2

Test ENG 104 COMPOSING RESEARCH 3.00
PP CREDIT HIST 201 AMERICAN HISTORY, 1492-1876 3.00
PP CREDIT HIST 202 US HISTORY, 1877 TO PRESENT 3.00
PP CREDIT HIST 999 TRANSFER CREDIT 3.00
PP CREDIT MATH 165 CALCULUS 1 4.00
PP CREDIT POLS 130 AMERICAN NATIONAL GOVERNMENT 3.00
CREDIT ACCEPTED 25.00

INDIANA UNIV PURDUE UNIV FT WA FT WAYNE, IN
FALL 2013 - FALL 2013

TRANSFER BSU
DEPT CRS DEPT CRS DESCRIPTION HR/ER
PHYS 22000 PHYS 110 GENERAL PHYSICS 1 4.00
CREDIT ACCEPTED 4.00

UNIV ST FRANCIS IN FT WAYNE, IN
SPRING 2015 - SPRING 2015

TRANSFER BSU
DEPT CRS DEPT CRS DESCRIPTION HR/ER
SOCI 101 SOC 100 PRINCIPLES OF SOCIOLOGY 3.00
CREDIT ACCEPTED 3.00

TOTAL CREDITS ACCEPTED: 32.00

CUMULATIVE BSU
HR/AT HR/PS HR/ER GPA HOURS QT/PT GPA HR/TOT
UGRAD 145.0 145.0 145.0 3.937 567.002 3.937 177.0
BSU DEGREES EARNED

BALL STATE UNIVERSITY MUNCIE, IN
DEGREE: BACHELOR OF ARTS
DATE: 05/04/19
MAJOR: POLITICAL SCIENCE
MAJOR CONCENTRATION: GENERAL
MINOR: PHILOSOPHY
MINOR: LITERATURE
HONORS: GRADUATE OF THE HONORS COLLEGE
HONORS: SUMMA CUM LAUDE
DEPARTMENTAL HONORS: POLITICAL SCIENCE

GENERAL TRANSCRIPT INFORMATION

INDIANA STGEC COMPLETED
STGEC TRANSFER CREDITS = 7
CUMULATIVE GPA/EARNED HRS FOR BA DEGREE
AWARDED 05/04/19: 3.937/ 177.0

NOT CURRENTLY REGISTERED 06/14/2021

** END OF TRANSCRIPT **

OFFICIAL TRANSCRIPT CONTAINS 2 PAGES.
TRANSCRIPT ONLY VALID IF
UNIVERSITY SEAL AND SIGNATURE
OF REGISTRAR ARE AFFIXED.

BALL STATE UNIVERSITY
Office of the Registrar / Attn: Transcripts

Muncie, IN 47306
(765) 285-1970

<http://www.bsu.edu/registrar>

ACADEMIC TRANSCRIPT LEGEND

ACCREDITATION: Ball State University is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools as a degree-granting institution at the associate, baccalaureate, master and doctoral levels. See university catalog for additional accreditation.

CALENDAR

From 1918 to August 11, 1988

Ball State University operated under the quarter calendar. Autumn, winter, spring and summer quarters were ten and one half weeks in length. Concurrent with summer quarter were two five-week sessions.

From August 28, 1988 to August 19, 2012

Ball State University operated under a semester calendar. Fall and spring semesters are fifteen weeks in length. Concurrent with the summer ten-week term are two five-week sessions.

Starting August 20, 2012

Ball State University operates under a semester calendar. Fall and spring semesters are fifteen weeks in length with one ten week summer term.

DEAN'S LIST: Undergraduate students are named to the Dean's List when the student has earned at least a 3.5 grade-point average for 12 or more credits of graded course work during a semester or for 6 or more credits of graded course work during a full summer term.

ACADEMIC CLEMENCY: Undergraduate Students who were not enrolled at BSU for a five-year period may petition to have grades and credits earned prior to that period removed from the calculation of their accumulative grade-point average. Acceptability of this policy by institutions other than BSU will be solely at the discretion of those institutions. Academic transcripts will reflect when clemency was granted and final grades are prefaced with a "U".

Graduate: Approved by the Graduate School, students may request a "fresh start" when changing or returning to a graduate program leading to the master's degree at BSU. "Fresh start" is defined as beginning a graduate program and having the graduate academic record recalculated to reflect no hours attempted and no graduate grade-point average for the new program. All graduate courses previously taken at BSU, however, will remain on the student's academic record and final grades are prefaced with a "G".

COMPETENCY CREDIT: Students may be awarded credit by means other than regular enrollment. Competency credit is awarded in the following ways: Advanced placement; test of standard written English or ACT English test and high school class rank; college level examination program (subject and general); departmental examination; departmental authorization; credit for foreign language proficiency; and credit earned during military service.

GRADE EXPLANATION

Prior to fall term, 1996: The following academic grades were included in the calculation of grade-point averages: A, B, C, D, F.

Starting fall term, 1996: The +/- notation was adopted and added to the above grades. The following academic grades are included in the calculation of grade-point averages (gpa):

Grade	Quality Points Per Credit	Grade	Quality Points Per Credit
A	4.000	C-	1.667
A-	3.667	D+	1.333
B+	3.333	D	1.000
B	3.000	D-	0.667
B-	2.667	F	0.000
C+	2.333	FN*	0.000
C	2.000	FS**	0.000

*FN = Failure (Never Attended)

**FS = Failure (Stopped Attending)

The following academic grades are not included in gpa calculation:

- CR - credit awarded under credit/no-credit provision
- NC - no-credit given under credit/no-credit provision
- W - official withdrawal from the course
- I - incomplete
- AU - audit
- NR - grade not reported by instructor
- IP - in progress
- EC - enrollment continued

COURSE REPETITION: Unless restrictions exist, courses may be repeated to improve the student gpa. Only the appropriately marked course and credit will be applied toward graduation requirements and calculated in the student's cumulative gpa. Some courses may be repeated for additional credit if this option is stated in the BSU catalog.

E or * - Grade is excluded in gpa calculation.

I, & or R - Grade is included in gpa calculation.

COURSE NUMBERING SYSTEM

Courses numbered from 000 to 099 are developmental and do not count toward graduation.

Courses numbered from 100 to 499 are for undergraduate students.

Courses numbered from 500 to 799 are for graduate students.

GRADUATION REQUIREMENTS

Prior to spring term, 2012

Associate: 93 quarter credits or 63 semester credits minimum for all degrees and a minimum accumulative 2.0 gpa.

Baccalaureate: 186 quarter credits or 126 semester credits minimum for all degrees and a minimum accumulative 2.0 gpa.

Graduate: 45 quarter credits or 30 semester credits minimum for all degrees and a minimum accumulative 3.0 gpa.

Starting spring term, 2012

Associate: 60 applicable semester credits minimum for all degrees and a minimum accumulative 2.0 gpa.

Baccalaureate: 120 applicable semester credits minimum for all degrees and a

Graduate: 30 applicable semester credits minimum for all degrees and a minimum accumulative 3.0 gpa.

GRADUATION WITH HONORS

Baccalaureate: Students completing all university requirements for graduation with a cumulative gpa of 3.9 or higher will graduate summa cum laude. If the cumulative gpa is between 3.6 and 3.899, students will graduate magna cum laude. If the cumulative gpa is between 3.6 and 3.799, students will graduate cum laude.

The gpa upon which graduation honors are determined includes all work at Ball State University completed for graduation. Prior to January 9, 2012, students must have earned a minimum of 63 semester credits at BSU to be eligible for honors. Beginning January 9, 2012, students must have earned a minimum of 60 semester credits at BSU to be eligible for honors.

Associate: Students graduating with associate degrees who maintain at least a 3.6 cumulative gpa will receive a designation of Associate of Arts/Science with Academic Distinction on their academic transcripts. The gpa upon which graduation honors are determined includes all work at BSU completed for graduation. Students must have earned a minimum of 30 semester credits at BSU to be eligible for Academic Distinction.

RELEASE OF INFORMATION

This transcript cannot be released to a third party without written consent of the student. This is in accordance with The Family Educational Rights and Privacy Act of 1974.

Ball State University has authorized National Student Clearinghouse to act as its agent for the processing of orders for official transcripts formatted in PDF. These transcripts are considered official documents and can be validated through the visualization of the Ball State University watermark seal contained within the document

John Rappaport
*Professor of Law and Ludwig and Hilde Wolf
Research Scholar*
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
jrapppaport@uchicago.edu | 773-834-7194

May 18, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Sara Maier, a member of the University of Chicago Law Review, for a clerkship in your chambers after she graduates from the University of Chicago Law School in 2022. Sara is smart, creative, and independent. She is dedicated to public interest work, having passed on lucrative second-summer jobs to build upon her already-impressive experience in public defense—this time in Palmer, Alaska, a far cry from her native Indiana, where she lived her entire life before coming to Chicago. Sara is one-of-a-kind but also easy to work with. I hope you'll give her a serious look.

Sara was in my 1L Criminal Law class last year before the pandemic hit. She asked great questions and participated frequently in class discussion. I also had the chance to interact with her outside the classroom—I remember one particular lunch with her and some of her classmates—and consistently found her to be curious and engaging. Our curriculum at Chicago, taught on a 10-week quarter system, is highly rigorous; our student body, competitive; and our curve, unforgiving. Sara's 177 in the course put her at the median, which is nothing to be upset about. That said, I was a little surprised that she didn't score even higher. I have the same reaction more generally when I look through her transcript. I don't think Sara's grades adequately convey what she has to offer.

In support of this assertion, I note that Sara competed her way onto the University of Chicago Law Review through a backbreaking writing competition. I advised her student comment for the journal, which analyzed whether a criminal defendant's post-arrest, pre-Miranda-warning silence is admissible in the prosecution's case-in-chief. The most persuasive case law on this somewhat arcane question turned out to come from state courts, prompting Sara to reflect upon theories of the proper relationship between state and federal courts and, eventually, to conduct an exhaustive 50-state survey. I think it was great fun for her, actually. She seems to love legal research and isn't afraid to put in the hours. Her final product was clear and professional, if a bit narrow given the nature of her topic.

Outside the academic realm, Sara has become a fixture at the Law School and has made an impressive number of professional connections under the circumstances. She is the Vice President of the Public Interest Law Society and holds board positions as well in OutLaw, the American Constitution Society, and Law Women's Caucus. In addition to her summer jobs at the Palm Beach County Office of the Public Defender, the Texas Fair Defense Project, and the Alaska Public Defender Agency, Sara has volunteered during the academic term, remotely, for the Southern District of Illinois Office of the Federal Public Defender and the Louisiana Capital Assistance Center. The last of those reflects Sara's passionate interest in capital punishment, an area in which she hopes to work post-clerkship.

When Sara describes her personal story, the image it summons for me is that of a butterfly leaving its chrysalis. Sara's father is a professor at a small Evangelical Lutheran seminary in Fort Wayne, Indiana, where she was reared in a pious household. A scholarship facilitated her voyage to Muncie, some 90 minutes away, for college at Ball State University. There, she captained the debate team and joined Arabic and feminist clubs. She declared her independence, straining her familial relationships as she grew into herself. She nurtured creative hobbies, like crafting detailed miniature houses like the Thorne Rooms at the Art Institute of Chicago, if you've been.

In short, Sara Maier is a warm, unique, and smart young lawyer in the making. If there's anything I can do to aid in your consideration of her application, please do not hesitate to call on me.

Sincerely,

John Rappaport

John Rappaport - jrapppaport@uchicago.edu - 773-834-7194

Professor Mary Anne Case
Arnold I. Shure Professor of Law
The University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
773-834-3867 | macase@law.uchicago.edu

June 15, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Sara Maier was a student in two classes I taught in the first half of 2021, the Constitutional Law of Religion and a Workshop on Regulation of Family, Sex, and Gender. In both she excelled, earning an A grade, something I rarely bestow. The classes were in some respects quite different: the former a doctrinal class in which the overwhelming majority of the readings and class discussion focused on Supreme Court cases; the latter an opportunity for scholars from around the country to present interdisciplinary works-in-progress and benefit from the comments of those in attendance, which included a small group of students almost always outnumbered by faculty and fellows. But the classes had some things in common. Because they were both seminar sized, a willingness to participate actively in class discussion was far more important than it would be in a larger lecture. From the first, Sara threw herself into the discussion, holding her own in conversation with senior academics in a workshop where most students hung back shyly, and always helpfully advancing the project. I am sure her contributions to work in chambers would be equally productive.

Her written assignment in each class was to write reaction papers, which required her choosing for herself topics of interest in the materials and addressing them in analytic essays, each of which was written with grace and elegance. She has a shrewd eye for a good topic – always identifying a serious, as yet unsolved, real world problem and bringing to bear on it an unbeatable combination of the heavy duty academic tools she has mastered, common sense, and the basic human decency that shines through everything she does. In addressing a proposal to improve the law of sexual harassment, for example, she made good use of everything from her study of Kantian philosophy to her realizations about the limits of the criminal law's mens rea requirements. And in dissecting Justice O'Connor's attempt to characterize the words "under God" in the pledge of allegiance as merely idiomatic, she began with an insightful taxonomy of invocations of the deity by ordinary people in everyday situations before going on to consider, using O'Connor's own test, the exclusionary effect of the pledge on persons from a wide variety of religious perspectives.

I have rarely encountered a student with so focused a sense of her purpose in going to law school, around which she has oriented her choice of courses, extracurricular activities (including choice of topic for her law review note), summer internship, even plans on where to relocate after law school. Her goal to help improve the criminal justice system developed during her undergraduate study of political philosophy, and she has held onto it with clear eyed commitment. A clerkship with you would add to her already full toolbox, in exchange for which you would get a dedicated, eager clerk who would be a great pleasure to work with.

If any further information about Sara would be useful, please do not hesitate to contact me.

Sincerely,

Mary Anne Case

Mary Anne Case - macase@law.uchicago.edu - 773-702-9494

This writing sample is a case note I wrote for *The University of Chicago Law Review Online*. Citations for the *UCLRO* are generally in-text hyperlinks, although if there is no publicly accessible page available, we will cite in a footnote.

BEYOND PORTILLO: THE FIFTH CIRCUIT'S UNSETTLED FUTURE ON THE RIGHT TO
PRESENCE OF COUNSEL AT INITIAL APPEARANCES

United States v. Portillo, 969 F.3d 144 (5th Cir. Aug. 5, 2020).

The right to presence of counsel has been [called](#) one of the “immutable principles of justice”—a lifeline for a defendant who lacks the legal knowledge or skill to present their case, even if they are completely innocent of the crime with which they were charged. Yet it is unsettled when this right is implicated post-arrest. While the Supreme Court has [ruled](#) that the right to counsel attaches at the defendant’s initial appearance—the defendant’s first appearance before a magistrate judge—the Court has not ruled that presence of counsel is actually required at this stage. In turn, federal courts are [split](#) on whether presence of counsel is required at the initial appearance.

In the recent case [United States v. Portillo](#),¹ the Fifth Circuit ruled that the defendant had no right to the presence of counsel at his initial appearance. On one hand, Portillo could be read as a definitive answer to this question in the Fifth Circuit: there is no right to presence counsel at an initial appearance. This understanding, however, ignores the fact that what occurs during an initial appearance can vary widely. Significantly, Portillo’s initial appearance did not contain a bail hearing, whereas other initial appearances could involve a bail hearing, at the discretion of the court.

¹ 969 F.3d 144 (5th Cir. Aug. 5, 2020).

It is important to place Portillo in the context of other federal cases ruling on presence of counsel at a bail hearing, especially [Booth v. Galveston County](#), a pending Fifth Circuit case. So contextualized, Portillo's impact on a defendant's right to the presence of counsel at an initial appearance may not be so definitive after all.

* * * *

The Bandidos Outlaws motorcycle club describes itself as “[the largest 1% club in the Western Hemisphere](#),” with a total of 1100 members across the American continents; it is especially well-established in Texas. In the early 2000s, John Portillo, one of the club's national sergeants-at-arms, [ordered](#) two hits on people whom he suspected were the Bandidos' enemies.² By 2014, Portillo was the club's national vice president. After the Bandidos' relationship with a fellow motorcycle club deteriorated, Bandidos members attacked or killed several members of the rival club over between 2014 and 2015.³ The most notable of these attacks [occurred](#) at a Twin Peaks in Fort Worth, culminating in the arrests of 177, the injuries of twenty, and the deaths of nine. Portillo likely [knew](#) of and encouraged many of these attacks.⁴

Portillo was eventually [charged](#) with thirteen counts, including a RICO conspiracy charge, assault charges, drug charges, and two charges for murder in aid of

² [Id.](#) at 157–58.

³ [Id.](#) at 158–59.

⁴ [Id.](#)

racketeering.⁵ At his initial appearance, he was informed of the charges against him and that the government would be detaining him pre-trial without bond.⁶ In 2018, a jury found Portillo guilty on all counts. Portillo appealed on eight issues, primarily relating to evidentiary matters; he also raised a Sixth Amendment issue, stating that his right to counsel had been violated, as he did not have appointed counsel at his initial appearance before a magistrate judge.⁷

Citing to the landmark Supreme Court case [Rothgery v. Gillespie County, Tex.](#), the Fifth Circuit [ruled](#) that Portillo’s initial appearance before the magistrate judge represented the commencement of adversarial proceedings against Portillo; thus, his Sixth Amendment right to counsel attached at this initial appearance.⁸ Yet under [Rothgery](#), attachment and presence of counsel are two separate inquiries. Because of this ambiguity, the Fifth Circuit held that Portillo was not entitled to presence of counsel at his initial appearance. The court reasoned that because Portillo’s initial appearance was not a “critical stage”—meaning a pre-trial stage during which “[counsel would help](#) the accused in coping with legal problems or meeting his adversary”—Portillo was not entitled to presence of counsel, even though the Sixth Amendment was implicated through attachment.⁹

The Fifth Circuit’s analysis of [Rothgery](#) is accurate. [Rothgery](#) [considered](#) only attachment, not actual representation or presence, at a defendant’s initial

⁵ [Id.](#) at 159.

⁶ [Id.](#) at 161.

⁷ [Portillo](#), 969 F.3d at 160.

⁸ [Id.](#) at 161.

⁹ [Id.](#)

appearance. The holding is markedly narrow, with the Supreme Court deeming the question of actual presence “[irrelevant](#).” While Rothgery does not preclude finding that an initial appearance also requires the presence of counsel, the case certainly does not require it. Consequently, it is an open question whether counsel’s presence is required at an initial appearance. In Portillo, the Fifth Circuit seemingly answered this question with a no.

Even so, indigent defendants in the Fifth Circuit—and other jurisdictions persuaded by Portillo—may not be entirely out of luck. The “events” that occur during an initial appearance can vary by jurisdiction or based on the facts of the defendant’s case; Portillo’s case is no exception. Portillo’s initial appearance included many of the events that trigger attachment, including a reading of the indictment, an acknowledgment of the maximum penalties Portillo faced, and a statement that the government intended to hold him without bond. But there was one significant event that did not occur at Portillo’s initial appearance: a bail hearing.¹⁰

* * * *

Exploring the holding in Portillo would be probably incomplete without mentioning a pending Fifth Circuit case—Booth v. Galveston County. In this case, the Southern District of Texas held that a bail hearing is a critical stage such that the defendant has a right to the presence of counsel; the court stated that this decision was a “[no-](#)

¹⁰ See id.

[brainer](#).” While the Fifth Circuit has not yet handed down a decision on this case, Booth brings nuance to the issue of presence of counsel at an initial appearance—and chips away at the idea that Portillo could end all inquiry in the Fifth Circuit on this question.

Because “[u]nrepresented defendants . . . are in no position at an initial bail hearing to present the best, most persuasive case on why they should be released pending trial,” the Booth court found that counsel would “[unquestionably](#) provide invaluable guidance.” This is primarily due to the defendant’s lack of knowledge regarding the law and its various pitfalls. The court reasoned that when defendants do decide to speak in their initial bail hearings, they often do so in the hopes of pre-trial release. But speaking without presence of counsel “[increases the](#) likelihood of the individual making an incriminating statement that can be used against him at a later date.” Consequently, “[if an](#) individual makes an incriminating statement at a bail hearing, the appointment of a lawyer to represent the individual later . . . would, in effect, be meaningless.”

Federal courts tend to agree with Booth’s holding. The [Second](#), [Third](#), and [Eighth](#) Circuits all hold that hearings on bail—whether they be the initial setting or a bail reduction—are critical stages such that the defendant has the right to the presence of counsel. The Fifth Circuit itself has suggested bail hearings are critical stages, because “[[t](#)][here is](#) no question that the issue of pretrial detention is an issue of significant consequence for the accused.” Some [state courts](#) have likewise determined that a bail hearing is a critical stage.

Of course, some courts hold that there is no right to presence of counsel at the initial appearance, notably the [Western District of Texas](#) and the [Ninth Circuit](#). The Ninth Circuit explicitly [holds](#) that an initial appearance does not become a critical stage, citing to the Supreme Court case [Gerstein v. Pugh](#). Yet in [Gerstein](#), the Supreme Court actually [issued](#) no holdings on whether counsel is required at a bail hearing. Instead, the Court found that the defendant was not entitled to representation by counsel at his probable cause hearing; at this hearing, the court also informed the defendant he would not be released on bond.

The facts of [Gerstein](#) are somewhat similar to the facts of [Portillo](#). As in [Gerstein](#), Portillo's initial appearance contained more than just a probable cause determination and a notice that he would not be released on bond. Yet, [Portillo](#)'s impact could partially turn on whether there is a meaningful difference between a bail hearing and a notice of no bond. Through its extension of [Gerstein](#), the Ninth Circuit suggests that there is no difference.

But there may be good reason to believe otherwise. Not only does the brunt of the previously mentioned caselaw cut in favor of representation at a bail hearing, the nature of a bail hearing suggests that it is practicably different from a notice of no bond. At a bail hearing, the accused is given the opportunity to make the case that they should be granted pre-trial release. When the accused speaks on their own behalf, negative consequences can extend far beyond failing to obtain pre-trial release. The accused is [at risk](#) of impeaching themselves and providing the state with evidence that can later be used against them at trial. As the Supreme Court has

recognized on several occasions, counsel can assist the defendant “[in making](#) effective arguments for the accused on such matters as the necessity for . . . bail,” whereas without counsel, “[though \[the accused\]](#) be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.” A bail hearing is different from a notice of no bond because the former gives the defendant the opportunity to advocate for themselves, which could impact not only the defendant’s pre-trial freedom, but the rest of the trial as well; the latter offers neither this opportunity nor its consequences. As “[what makes](#) a stage critical is what shows the need for counsel’s presence,” a bail hearing should be considered a critical stage.

The significance of bail hearings is bolstered by empirical research describing the consequences pre-trial detention can have. Legal scholarship [suggests](#) that a bail hearing should be considered a critical stage, as the likelihood of pre-trial release increases significantly if the defendant is represented; defendants who are placed on bail can still see marked reductions in their bond amount if they are represented by counsel at their bail hearing. Pre-trial release often has [favorable results](#) for the defendant throughout the later stages of the criminal process, possibly decreasing the chances that the defendant take an undesirable plea bargain. Conversely, pre-trial incarceration negatively impacts the defendant’s life inside and outside the courtroom, as “[incarcerated detainees](#) often lose jobs and face eviction from their homes . . . the delay in defense investigations and witness interviews caused by pretrial incarceration[] impedes preparation of a defense and is a sure-fire prescription for miscarriages of justice and convicting innocents at trial.” [Booth cites](#)

favorably to several studies describing the consequences of pre-trial incarceration. Considering the heavy consequences of pre-trial incarceration and an attorney's ability to decrease the rate of pre-trial incarceration, there is compelling evidence that a bail hearing should be considered a critical stage.

* * * *

What, then, can we make of Portillo? Portillo's holding is certainly not unprecedented, as [other circuits](#) have held that an initial appearance is not a critical stage requiring the presence of counsel, even though under Rothgery, right to counsel attaches at these stages. But because the Fifth Circuit has previously [recognized](#) the consequence of bail hearings, Portillo may not be the end-all for presence of counsel at initial appearances in the Fifth Circuit. Booth could give the Fifth Circuit an opportunity to synthesize Portillo's holding and the Fifth Circuit's previous statements regarding the importance of bail hearings.

Perhaps this is too optimistic an outlook. Portillo could possibly be read to preclude a defendant-friendly outcome in Booth. The Fifth Circuit could determine that a bail hearing is not a critical stage, so setting bail during the initial appearance would not guarantee the accused the right to presence of counsel at the initial appearance. This outcome is also possible if the Fifth Circuit decides there is no material difference between a bail hearing and informing the accused they will be held without bond.

Ultimately, we do not know what the Fifth Circuit will decide since Booth is still pending. The Southern District of Texas [presents](#) an impassioned opinion in favor of defendants' rights, recognizing that the results of bail hearings can negatively impact the defense's case, cause the defendant to inadvertently incriminate themselves, and result in the defendant's prolonged detention. But Portillo does not necessarily preclude the Fifth Circuit from issuing a defendant-friendly decision in Booth. The factual differences in initial appearances—one containing a bail hearing, one not—could result in the Fifth Circuit determining that an initial appearance is a critical stage so long as a bail hearing is conducted as part of the initial appearance. Portillo and Booth could fit snugly together and clear up this messy piece of law, at least in the Fifth Circuit.

The question remains whether counsel would be required at the entire initial appearance, or just the section during which the judge sets bail. The answer hinges upon whether a bail hearing would transform an initial appearance into a critical stage, or if the different events that occur during an initial appearance can be compartmentalized such that only the bail hearing is a critical stage. Further litigation may be needed to answer this question. And again, there is no guarantee that when the Fifth Circuit eventually does decide Booth, the holding will have any impact on presence of counsel cases post-Portillo. But if the Supreme Court is correct in stating that the Constitution “[strikes the balance](#) in favor of the right of the accused to be advised by his lawyer,” then the Fifth Circuit should give serious

thought to the right to presence of counsel at bail hearings and whether this impacts defendants' rights at their initial appearances.

Applicant Details

First Name **Alicia**
 Last Name **Mallo**
 Citizenship Status **U. S. Citizen**
 Email Address alicia.mallo@case.edu
 Address

Address
Street 12026 White Cord Way City Columbia State/Territory Maryland Zip 21044 Country United States

Contact Phone Number **4436839727**

Applicant Education

BA/BS From **University of Akron**
 Date of BA/BS **May 2019**
 JD/LLB From **Case Western Reserve University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=33603&yr=2013
 Date of JD/LLB **May 15, 2022**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Health Matrix**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Cover, Avidan
ayc30@case.edu
216-368-5224

References

Avidan Cover, J.D.
Case Western Reserve University School of Law
Associate Dean for Academic Affairs
Director, Institute for Global Security Law and Policy
Phone Number: (216) 368-5224
Email: avidan.cover@case.edu
Address: 11075 East Blvd., Cleveland, OH 44106

Katherine Van Tassel, J.D., M.P.H., B.S.N.
Case Western Reserve University School of Law
Visiting Professor of Law
Phone Number: (216) 368-1673
Email: katherine.vantassel@case.edu
Address: 11075 East Blvd., Cleveland, OH 44106

Colleen Treml, J.D.
John Carroll University
General Counsel
Phone Number: (216) 397-1595
Email: ctreml@jcu.edu
Address: 1 John Carroll Boulevard, University Heights, OH 44118
**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Alicia Mallo
19321 Knowlton Parkway Apt. 103
Strongsville, OH 44149
443-683-9727
Alicia.mallo@case.edu

June 15, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Pennsylvania
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third year student at Case Western Reserve University School of Law and am writing to apply for a clerkship in your chambers beginning in August 2022. My spring and summer of 2021 spent interning under Chief Judge Mark A. Barnett at the United States Court of International Trade convinced me that clerking for a federal court will be the ideal way to begin my career.

Attached for your review are my resume, law school transcript, writing sample, and list of references. The writing sample is a motion for summary judgment from my legal writing course. Letters of recommendation from Case Western Reserve University Professors Avidan Cover and Katharine Van Tassel. These recommenders have worked with me on broad array of disciplines, and this is further reflected in my coursework which has been diverse with a focus in administrative law, trade law, and international law.

Thank you for considering my application. Please feel free to contact me if I can provide you with any additional information.

Respectfully,

Alicia Mallo

Alicia Mallo

19321 Knowlton Parkway Apt 103 Strongsville, Ohio 44149
(443) 683-9727 Alicia.Mallo@Case.edu

EDUCATION

Case Western Reserve University School of Law (Cleveland, Ohio), Juris Doctor Candidate, May 2022

Hugo Grotius Fellow, Frederick K. Cox International
Law Center

Associate Editor, *Health Matrix Journal of Law-Medicine*

GPA: 3.4, CALI Award in Trade Law

Associate Editor, War Crimes Prosecution Watch

University of Akron Williams Honors College, (Akron, Ohio), Bachelor of Arts in Political Science, May 2019, *summa cum laude*, Major: Political Science, Security Studies track

EXPERIENCE

Judicial Intern, US Court of International Trade, for Honorable Mark A. Barnett, Chief Judge (Remote, New York) (January 2021 – Current)

- Draft legal memoranda and conduct legal research on various cases where the US Court of International Trade has nationwide jurisdiction over civil actions arising out the customs and international trade laws of the United States
- Interpret and apply evidentiary findings to develop and document recommendations in legal research analysis
- Briefed case files prior to hearings and actively discussed pertinent issues of the cases and applicable precedents

Research Assistant, Case Western Reserve University (Cleveland, Ohio) (June 2020 – May 2021)

- Performed research for Visiting Professor Katherine Van Tassel on constitutional law and public health law issues
- Drafted chapters for Van Tassel's INTERNATIONAL ENCYCLOPAEDIA OF LAWS: MEDICAL LAW, UNITED STATES OF AMERICA (Wolters Kluwer - Kluwer Law International, forthcoming 2022)
- Developed instruction manual for future assistants, focused on technology systems

Legal Extern, John Carroll University General Counsel (Cleveland, Ohio) (May 2020 – August 2020)

- Conducted legal research in various fields of law for general counsel and staff
- Completed in-depth projects including amending various university policies, research on contract law and intellectual property law
- Participated in meetings with clients to review legal research
- Developed and documented legal memos

Associate Editor, Health Matrix: Journal of Law-Medicine (Cleveland, Ohio) (September 2020-present)

- Responsible for editing journal submissions, verifying and correcting citations and footnotes for publication
- Produced innovative health note, "Lessons Learned From Covid-19: Mitigating the Risk of Disease Spread"

Hugo Grotius Fellow, Frederick K. Cox International Law Center, (Cleveland, Ohio) (August 2019-June 2020)

- Conducted research under the guidance of Dean Avidan Cover on the Supreme Court Case DEPARTMENT OF HOMELAND SECURITY ET AL. v. REGENTS OF THE UNIVERSITY OF CALIFORNIA
- Co-authored published opinion editorials

Associate Editor, War Crimes Prosecution Watch (Cleveland, Ohio) (2019-2020)

- Research and report on current events occurring in the prosecution of War Crimes in Bosnia and Herzegovina

Case Management Team, Yemen Accountability Project (Cleveland, Ohio) (2019-2020)

- Analyze geopolitical conflict incidents in Yemen with data tracking
- Conduct research focused on geopolitical movements, military movements and weapons used

PUBLICATIONS

"Deporting DACA recipients would be a loss to the nation," Cincinnati Enquirer, November 8, 2019.

"Court should defer ruling on DACA's legality," Akron Beacon Journal, November 9, 2019.

"Development of Violence and Sectarianism in Lebanon" (2019). Williams Honors College, Honors Research Projects. 936.

ACTIVITIES

International Law Society Association

Women's Law Association

National Lawyers Guild

Student ID: 3474170
SSN: XXX-XX-7190
Student Name: Alicia G Mallo

Case Western Reserve University
Unofficial Transcript

Page 1 of 1
06/15/2021

Academic Program History

Program: Juris Doctor
Active in Program

Course	Description	Attempted	Earned	Grade	Points
LAWS 6503	Health Matrix Seminar	1.00	1.00	A-	3.666
LAWS 2001	Professional Responsibility	3.00	3.00	A-	10.998
LAWS 2002	Constitutional Law	4.00	4.00	B	12.000
LAWS 5123	Trade Law	3.00	3.00	A	12.000
LAWS 1931	Race, Law & Society	0.00	0.00	CR	0.000

Beginning of Law Record

Course	Description	Attempted	Earned	Grade	Points
LAWS 1101	Contracts	4.00	4.00	B+	13.332
LAWS 1102	Criminal Law	3.00	3.00	B+	9.999
LAWS 1103	Torts	4.00	4.00	A	16.000
LAWS 1801	LLEAP1 - Wrting Advcy & Profism	3.00	3.00	B+	9.999

Term Honor:	Dean's Honor List				
Term GPA:	3.524	Term Totals	14.00	14.00	49.330
Cum GPA:	3.524	Cum Totals	14.00	14.00	49.330

Term Honor:	Dean's Honor List				
Term GPA:	3.510	Term Totals	21.00	21.00	59.664
Cum GPA:	3.516	Cum Totals	51.00	51.00	108.994

Class Rank: 35 of 120

Course	Description	Attempted	Earned	Grade	Points
LAWS 6503	Health Matrix Seminar	2.00	2.00	A-	7.332
Req Designation:	JD Writing Requirement				
LAWS 7110	Public Sector Externship	3.00	3.00	CR	0.000
LAWS 5745	Foreign Affairs Law	2.00	2.00	A-	7.332
LAWS 4807	Criminal Procedure I	3.00	3.00	B-	7.998
LAWS 4806	Administrative Law	3.00	3.00	B	9.000
LAWS 2803	LLEAP 3: Advanced Skills	3.00	3.00	B	9.000
LAWS 1931	Race, Law & Society	1.00	1.00	CR	0.000

Course	Description	Attempted	Earned	Grade	Points
LAWS 1201	Civil Procedure	4.00	4.00	H	0.000
LAWS 1203	Property	4.00	4.00	P	0.000
LAWS 1802	LLEAP2 - Wrting Advcy & Profism	3.00	3.00	P	0.000
LAWS 1204	Legislation and Regulation	3.00	3.00	H	0.000
LAWS 1901	International Law Fundamentals	1.00	1.00	CR	0.000
LAWS 1917	Energy & Climate Law	1.00	1.00	CR	0.000

Academic Standing: Good standing

Term GPA:	0.000	Term Totals	16.00	16.00	0.000
Cum GPA:	3.524	Cum Totals	30.00	30.00	49.330

Academic Standing: Good standing

Term GPA:	3.128	Term Totals	17.00	17.00	40.662
Cum GPA:	3.401	Cum Totals	68.00	68.00	149.656

Class Rank: 50 of 125					
Career Totals					
Cum GPA:	3.401	Cum Totals	68.00	68.00	149.656
Total Credits Earned:	68.00				

Non-Course Milestones
10/20/2020 - Substance Abuse Training Compl

End of Law Record

Course	Description	Attempted	Earned	Grade	Points
LAWS 4201	Health Law	3.00	3.00	B	9.000
LAWS 7130	Non-profit Externship	4.00	4.00	CR	0.000
LAWS 4101	International Law	3.00	3.00	A	12.000

The purpose of this document is grade reporting only. Since it may be incomplete, it should never be used as a substitute for an official transcript.

Directory information is currently restricted.

Name: Alicia Mallo
Student ID: 2868141

Page 1 of 3

Institution Info: The University of Akron
302 Buchtel Common
Akron, OH 44325
Institution ID: 003123
Birthdate: 08-22-xxxx
Student Address: 437 Spicer Street Apt 2
Akron, OH 44311
Print Date: 12/21/2019

Requestor: Alicia Mallo

Academic Program History

Program: The University of Akron UG
09/30/2014: Applicant
09/30/2014: Physics Major
Program: Arts & Sciences Undergraduate
11/08/2014: Admitted
11/08/2014: Physics Major
Program: Arts & Sciences Undergraduate
02/20/2015: Active in Program
02/20/2015: Physics Major
Program: Arts & Sciences Undergraduate
07/28/2015: Active in Program
07/28/2015: Political Science Major
Program: Arts & Sciences Undergraduate
10/16/2017: Active in Program
10/16/2017: Political Science Major
10/16/2017: MINOR - Arabic Minor
Program: Arts & Sciences Undergraduate
05/11/2019: Completed Program
05/11/2019: Political Science Major
05/11/2019: MINOR - Arabic Minor
Program: The University of Akron PBND
05/11/2019: Active in Program
05/11/2019: Arts & Sciences - Exploratory Studies Non-Degree Seeking

Degrees Awarded

Degree: Bachelor of Arts
Confer Date: 05/11/2019
Degree Honors: Summa Cum Laude
Degree Honors: Williams Honors Scholar
Plan: Political Science
Plan: MINOR - Arabic

Test Credit

Advanced Placement Government & Politics: U.S.
3700 100 Government & Politics in US
Earned
4.000

Advanced Placement 3470 262	Statistics Introductory Statistics II	Earned 2.000
Advanced Placement 3470 261	Statistics Introductory Statistics I	Earned 2.000
Advanced Placement 3750 100	Psychology Introduction to Psychology	Earned 3.000
Advanced Placement 3650 291	Physics: Mechanics Elementary Classical Physics I	Earned 4.000
Advanced Placement 3450 221	Mathematics: Calculus AB Analytic Geometry-Calculus I	Earned 4.000
Advanced Placement 3300 111	English Literature & Composition English Composition I	Earned 3.000
Advanced Placement 3700 300	Government & Politics: Comparative Comparative Politics	Earned 4.000
Advanced Placement 9999 882	World History GE Soc Science credit	Earned 4.000

Beginning of Undergraduate Record

Course	Description	2015 Fall	Attempted	Earned	Grade	Points
1870 250	Honors Colloquium: Humanities		2.000	2.000	A-	7.400
Req Designation:	Honors Course					
Course	Honors Course					
Attributes:						
3300 112	English Composition II		3.000	3.000	A-	11.100
Req Designation:	Honors Course					
Course	Honors Course					
Attributes:						
3370 101	Introductory Physical Geology		4.000	4.000	A	16.000
3501 101	Beginning Arabic I		4.000	4.000	A	16.000
3700 150	World Politics & Government		3.000	3.000	A	12.000

Term GPA	3.906	Term Totals	16.000	16.000		62.500
Cumulative GPA	3.906	Cumulative Totals	16.000	16.000		62.500

Term Honor: Dean's List

Academic Standing Effective 12/13/2015: Good Standing

Directory information is currently restricted.

Name: Alicia Mallo
Student ID: 2868141

Page 2 of 3

2016 Spring					
Course	Description	Attempted	Earned	Grade	Points
3250 244	Introduction Economic Analysis Online (100% Online)	0.000	0.000	WD	0.000
Course Attributes:					
3501 102	Beginning Arabic II	4.000	4.000	A-	14.800
3700 201	Intro to Political Research	3.000	3.000	A	12.000
Course Attributes:					
3700 303	Classroom: Lecture / Rec. Web-enhanced (1-30% Online) Intro to Political Thought	3.000	3.000	A	12.000
Course Attributes:					
3700 395	Classroom: Lecture / Rec. Online (100% Online) Intern: Government & Politics	2.000	2.000	A	8.000
3700 410	International Security Policy	3.000	3.000	A	12.000
Course Attributes:					
	Baccalaureate I				
	Classroom: Lecture / Rec.				
Term GPA	3.920 Term Totals	15.000	15.000		58.800
Cumulative GPA	3.913 Cumulative Totals	31.000	31.000		121.300
Term Honor: Dean's List					
Academic Standing Effective 05/08/2016: Good Standing					

2016 Fall					
Course	Description	Attempted	Earned	Grade	Points
3250 244	Introduction Economic Analysis	3.000	3.000	A	12.000
Course Attributes:					
3400 289	General Studies I Classroom: Lecture / Rec. World Civ: Middle East	2.000	2.000	A	8.000
Course Attributes:					
3501 201	General Studies II Classroom: Lecture / Rec. Intermediate Arabic I	4.000	4.000	A	16.000
3700 413	Global Public Health Threats	3.000	3.000	A	12.000
3700 446	Intelligence and Counterterror	3.000	3.000	A	12.000
Course Attributes:					
	Baccalaureate				
Term GPA	4.000 Term Totals	15.000	15.000		60.000
Cumulative GPA	3.941 Cumulative Totals	46.000	46.000		181.300
Term Honor: President's List					
Academic Standing Effective 12/11/2016: Good Standing					

2017 Spring					
Course	Description	Attempted	Earned	Grade	Points
1870 360	Honors Colloq: Social Science	2.000	2.000	A	8.000
3250 426	Applied Econometrics	3.000	3.000	A-	11.100
3501 202	Intermediate Arabic II	4.000	4.000	A	16.000
3700 337	Terrorism: Prpts, Plots & Rspn	3.000	3.000	A	12.000
Course Attributes:					
3700 397	Baccalaureate I Indp Study: Political Science	3.000	3.000	A	12.000
Course Attributes:					
3700 405	Baccalaureate I Individual Study Politics in the Middle East	3.000	3.000	A	12.000
Term GPA	3.950 Term Totals	18.000	18.000		71.100
Cumulative GPA	3.944 Cumulative Totals	64.000	64.000		252.400
Term Honor: Dean's List					
Academic Standing Effective 05/07/2017: Good Standing					

2017 Fall					
Course	Description	Attempted	Earned	Grade	Points
3250 410	Intermediate Microeconomics	3.000	3.000	B+	9.900
Course Attributes:					
3400 382	The Vietnam War	3.000	3.000	A	12.000
Course Attributes:					
3400 496	Baccalaureate I Classroom: Lecture / Rec. Sp St in History: Other	3.000	3.000	A	12.000
Course Topic:					
3501 304	Sp St: U.S., Israel & Palestine				
Course Attributes:					
3700 492	Classroom: Lecture / Rec. Cultural Readings in Arabic	4.000	4.000	A	16.000
Course Attributes:					
3700 492	Baccalaureate Selected Topics in Pol Sci	3.000	3.000	A	12.000
Course Topic:					
ST: Counterterrorism					
Term GPA	3.869 Term Totals	16.000	16.000		61.900
Cumulative GPA	3.929 Cumulative Totals	80.000	80.000		314.300
Term Honor: Dean's List					
Academic Standing Effective 12/10/2017: Good Standing					

Directory information is currently restricted.

Name: Alicia Mallo
Student ID: 2868141

Page 3 of 3

2018 Spring					
Course	Description	Attempted	Earned	Grade	Points
3250 400	Intermediate Macroeconomics	3.000	3.000	A	12.000
Course Attributes:	General Education Tier 3 - Critical Thinking				
3400 461	The U.S. as a World Power	3.000	3.000	A	12.000
Course Attributes:	Baccalaureate				
3450 222	Baccalaureate I				
Course Attributes:	Classroom: Lecture / Rec.	4.000	4.000	A	16.000
	Analytic Geometry-Calculus II				
	Baccalaureate				
	Baccalaureate I				
	General Education Tier 1 - Quantitative Reasoning				
	Special Exam 2				
3501 301	Classroom: Lecture / Rec.	4.000	4.000	A-	14.800
Course Attributes:	Composition and Conversation				
	Baccalaureate				
3700 328	American Foreign Policy Proc	3.000	3.000	A-	11.100
3700 397	Indp Study: Political Science	0.000	0.000	A	0.000
Course Attributes:	Baccalaureate				
	Baccalaureate I				
	Individual Study				
Repeated:	Illegal repeat				
Term GPA	3.876 Term Totals	17.000	17.000		65.900
Cumulative GPA	3.920 Cumulative Totals	97.000	97.000		380.200
Term Honor: Dean's List					
Academic Standing Effective 05/06/2018: Good Standing					
2018 Summer					
Course	Description	Attempted	Earned	Grade	Points
1870 470	Honors Colloq; Natural Sci	2.000	2.000	A	8.000
Course Attributes:	Honors Course				
5540 139	Self Defense	1.000	1.000	A	4.000
Course Attributes:	General Studies				
	General Studies III				
	Lecture / Laboratory				
Term GPA	4.000 Term Totals	3.000	3.000		12.000
Cumulative GPA	3.922 Cumulative Totals	100.000	100.000		392.200
Academic Standing Effective 08/19/2018: Good Standing					

2018 Fall					
Course	Description	Attempted	Earned	Grade	Points
3700 335	Law & Society	3.000	3.000	A	12.000
Course Attributes:	Online (100% Online)				
3700 392	Sel T: Political Science	3.000	3.000	A	12.000
Course Topic:	Sel T: Field Research				
3700 395	Sel T: Field Research				
Course Topic:	Intern: Government & Politics	7.000	7.000	A	28.000
Term GPA	4.000 Term Totals	13.000	13.000		52.000
Cumulative GPA	3.931 Cumulative Totals	113.000	113.000		444.200
Academic Standing Effective 12/09/2018: Good Standing					
2019 Spring					
Course	Description	Attempted	Earned	Grade	Points
3400 498	Sp St in History: Other	3.000	3.000	A-	11.100
Course Topic:	Sp St: Emp. Genoc&Viol Mid East				
3501 497	Indiv Reading: Arabic	4.000	4.000	A	16.000
3700 492	Selected Topics in Pol Sci	3.000	3.000	A-	11.100
Course Topic:	ST: Intelligence Analysis				
Course Attributes:	Baccalaureate				
3700 497	Sr Honors Proj: Political Sci	3.000	3.000	A	12.000
Term GPA	3.862 Term Totals	13.000	13.000		50.200
Cumulative GPA	3.924 Cumulative Totals	126.000	126.000		494.400
Term Honor: Dean's List					
Academic Standing Effective 05/05/2019: Good Standing					
Undergraduate Career Totals					
Cumulative GPA:	3.924 Cumulative Totals	126.000	126.000		494.400
Other Institutions Attended					
Wilde Lake High Sch					
5640 Trumpeter Road					
Columbia, MD 21043					

----- End of Transcript -----



Avidan Y. Cover
Associate Dean for Academic Affairs
Professor of Law

Case Western Reserve University
School of Law
11075 East Boulevard
Cleveland, Ohio 44106

Phone 216-368-5224
Fax 216-368-5137
E-mail avidan.cover@case.edu
<http://law.case.edu>

June 13, 2021

Re: *Alicia Mallo*

To Whom It May Concern:

It is with great pleasure that I recommend Alicia Mallo for a federal judicial clerkship. Alicia is a hardworking, curious, and highly intelligent law student who will be a terrific asset to any judge's chambers.

I had the pleasure of first getting to know Alicia during her very first semester of law school. As a recipient of our law school's Hugo Grotius International Law Scholarship, Alicia was expected to work at least 20 hours on an intensive research and writing project. Alicia and a fellow first-year student worked with me on research relating to immigration law, specifically litigation over the Deferred Action for Childhood Arrivals (DACA) program.

Alicia distinguished herself by surpassing the minimum requirements of the Grotius Scholarship. She took to her work with enthusiasm, creativity, and commitment. Her writing and research are well beyond that of most of her fellow students. She is an eager and fast learner.

Over the course of the fall semester, Alicia and I met on a near-weekly basis to review, discuss, and analyze the lower-court decisions relating to the Trump administration's efforts to rescind DACA. The case involved particularly complicated issues concerning justiciability and the Administration Procedure Act and the Equal Protection Clause—hardly the routine course of study in the first law school semester. Alicia was unbowed by the subject matter. She asked thoughtful and serious questions, reflecting the significant time and consideration that she put into reading and thinking about the issues. In addition to reading the judicial opinions, Alicia also reviewed numerous briefs that the parties and amici curiae submitted to the Supreme Court.

As part of her work, Alicia authored a memorandum on the United States Court of Appeals for the Ninth Circuit opinion, focusing specifically on the issue of whether the Department of Homeland Security's rescission of DACA is committed to agency discretion and is therefore immune from judicial review. Alicia had to analyze highly complex issues involving whether the rescission falls within an exception to non-reviewability because it entails an agency's incorrect determination of its jurisdiction. Her memo reflected a very mature and developed

understanding of administrative law and justiciability for someone at such an early stage in her legal education. Alicia and her research partner's analysis have aided me in my own research relating to executive power and immigration, which I have presented in both presentations and articles.

Based on our collective research, Alicia, her partner, and I co-authored an op-ed, titled, "Deporting DACA recipients would be a loss to the nation." The piece, which may be found here, <https://www.cincinnati.com/story/opinion/2019/11/08/opinion-deporting-daca-recipients-would-loss-nation/2528535001/>, was published in the *Cincinnati Enquirer* and *Akron Beacon Journal* immediately prior to oral arguments in the DACA case. The essay argued that DACA is a sound policy and a proper use of prosecutorial discretion.

Alicia's work on the op-ed demonstrated her mastery of the subject matter, evidencing critical legal and writing skills in distilling complicated issues into plain language. Working with her partner and me, she also displayed a terrific ability to collaborate, receive criticism, and improve on and learn from feedback. Her work was always timely and well written. Alicia also volunteered—and I accepted her offer—to continue researching for me this past spring semester, on issues relating to the travel ban. Her work continued to be of the highest and most thoughtful quality.

During the 2020 fall semester, I was fortunate to have Alicia in my International Law course. I demand significant participation and Alicia distinguished herself as an active member in class, providing helpful insights, from which her classmates greatly benefitted. She performed very well in two simulations involving negotiations between the United States and China over the International Health Regulations and a World Health Assembly meeting considering Palestine's submission for acceptance as a state member of the WHO. She proved herself very familiar and conversant with treaty interpretation, negotiation skills, and the underlying substantive international law, reflecting a seriousness and preparation required of the best of lawyers.

Through my time getting to know Alicia, I have seen her flourish as a student of law, digesting so much in her four semesters. She will bring to a judge's chambers the key elements of curiosity, intellectual rigor, and industry with which she has acquitted herself so well in law school. Finally, and most importantly, Alicia is a kind, warm, and good person.

Should you have any additional questions, please do not hesitate to contact me.

Sincerely,

Avidan Cover

Avidan Y. Cover

Alicia Mallo

19321 Knowlton Parkway Apt 103 Strongsville, Ohio 44149
(443) 683-9727 Alicia.Mallo@Case.edu

Writing Sample: Motion for Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

B.B., a minor, by and through his parents)	CASE NO. 1:21CV346
THOMAS AND SUZIE BLODGETT)	
)	
Plaintiff,)	JUDGE BERNICE JEFFRIES
)	
v.)	
)	
WESTBRIDGE LOCAL SCHOOL)	
DISTRICT BOARD OF EDUCATION)	REPLY BRIEF IN SUPPORT OF
)	DEFENDANT’S MOTION FOR
Defendants.)	SUMMARY JUDGMENT

I. PRELIMINARY STATEMENT

Westbridge Local School District Board of Education (“Westbridge”) is responsible for providing a good education to 5,000 students in its seven buildings. Westbridge tries to ensure that its students are successful in their academic endeavors by balancing all their diverse, individual needs. B.B. was one of these 5,000 students until March 30, 2020, when he withdrew to attend a private school instead. Westbridge tried to make B.B.’s time in its school system successful. However, B.B. struggled with his fellow students. Some other students picked on B.B. and B.B. would occasionally retaliate against them. Westbridge used various methods to try to help B.B. succeed. In fact, Westbridge thought these measures were working when no new incidents were documented, no complaints were reported, and no phone calls from B.B.’s parents were received. But B.B.’s parents still walked in on March 30th asking for B.B.’s transcripts for a transfer to Lakeside Academy. Now B.B. and his parents are bringing this claim that Westbridge was clearly unreasonable in how it tried to help B.B. The evidence available shows that no material fact is in dispute. Because B.B. did not properly exhaust his administrative remedies and no reasonable jury

could find that Westbridge was deliberately indifferent to B.B.'s peer-on-peer harassment, it is entitled to summary judgment and B.B.'s claim must be dismissed.

II. STATEMENT OF FACTS

Westbridge High School has sufficient anti-bullying policies and trainings to protect its approximately 390 students in each grade – more than 1,500 students in total. Irwin Dep. at 7:4. At the beginning of the school year, in August, Westbridge runs a school-wide anti-bullying assembly for all its students. *Id.* at 7:21. Prior to the 2019-2020 school year Vickie Norton, Westbridge High School's inclusive education specialist, ran a mandatory training for the high school teachers to help them recognize disability harassment. *Id.* at 8:4-7. Westbridge has an anti-bullying policy that was first adopted in 2015. *Id.* at 7:7-8. The anti-bullying policy "prohibits behaviors that ridicule, humiliate or intimidate another student, including physical violence, threats, taunts, stealing possessions, and exclusion from the peer group." *Id.* at 7:10-12; *see also* Exhibit A ("Anti-Bullying Policy"). Westbridge High School requires that teachers and staff read and adhere to this policy. Irwin Dep. at 7:18-19. Students and parents are also required to read and sign the anti-bullying policy at the beginning of each school year. Exhibit B ("Handbook Signature"). The anti-bullying policy gives the principal of the school the discretion to consider the facts of any incident to determine whether to discipline and the severity of the discipline. Irwin Dep. at 8:18-20.

B.B. started attending Westbridge's schools at a young age – in preschool. B.B. Dep. at 8:2. B.B. has Asperger's Syndrome and a speech impairment. *Id.* at 6:11-13. Due to these disabilities, other Westbridge students increasingly harassed B.B. starting in eighth grade. *Id.* at 9:15-16. Westbridge responded by implementing B.B.'s first anti-bullying focused Individualized Education Plan ("IEP"). *See* Exhibit C ("Eighth Grade IEP"). This plan allowed B.B. to leave each

class early, eat lunch away from other students, and wait for the bus with a teacher. *Id.* B.B. said these accommodations, while not making him get along with his peers any better, did decrease the bullying. B.B. Dep. at 11:15-16.

After B.B. finished eighth grade, he moved to Westbridge High School for ninth grade. *See* B.B. Dep. at 8:4. Before the start of the school year, Vickie Norton and Westbridge High School Principal James Irwin (“Principal Irwin”) met with B.B.’s parents for an IEP meeting. Irwin Dep. at 9:9. Norton expressed her professional concern that B.B.’s eighth grade IEP would have negative effects on B.B.’s academics if it continued into the ninth-grade year. *Id.* at 9:13-14. Specifically, Norton thought the plan would invite more peer harassment as it made B.B. stand out even more as being different. *Id.* at 9:17-18. B.B.’s parents agreed to a new IEP with “(a) two aides [that] would monitor hallways when students were switching class; (b) the physical education teacher would remain in the locker room while the male students prepare for class; and (c) a student “buddy” would be assigned to sit with [B.B.] at lunch and on the bus.” *Id.* at 10:3-6; Exhibit D (“Ninth Grade IEP”). Vickie Norton asked teachers to nominate students to be B.B.’s buddies. Irwin Dep. at 10:10-11. Once nominated, the students were required to write a paragraph about why they wanted to be a buddy. *Id.* Vickie Norton then selected each student buddy and instructed them to not only be respectful of B.B. but include him in their discussions. *Id.* at 10:8. B.B. also regularly met with a school counselor. *See* Exhibit E (“Counselor Notes”).

Unfortunately, B.B.’s Ninth Grade IEP did not curb all of the peer harassment. B.B. Dep. at 13:2-5. Teachers and staff at Westbridge High School filed four incident reports. *See* Def.’s Disc. Resp. to Pl.’s Interrog. No. 11. The first, on September 27, 2019, student R.T flipped B.B.’s lunch tray. *Id.* The lunchroom aide reported it, gave R.T. detention, helped B.B. find a new tray and allowed him to eat his lunch in the kitchen. *Id.* The second, on October 15, 2019, student M.L.

and other unidentified students tripped B.B. in the hallway, teased him about the upcoming dance, and threatened him to stay away from the dance. *Id.* Westbridge tried using peer mediation to resolve the problems between B.B. and M.L. *Id.* A few days after this incident, B.B.'s parents sent in a note that B.B. had fractured his wrist from falling during this incident. *See* Exhibit F ("Note to School"). On November 5, 2019, staff filed the third incident report after T.M. flipped B.B.'s lunch tray. Def.'s Disc. Resp. to Pl.'s Interrog. No. 11. The lunchroom aide reported it, gave T.M. detention, helped B.B. find a new tray, and allowed him to eat his lunch in the kitchen. *Id.* The fourth incident report, from December 18, 2019, involved students M.L., R.T., A.G. teasing B.B., trying to trip him, and holding B.B.'s stall door shut in the bathroom. *Id.* The supervising teacher removed the offending students from B.B.'s group and filed an incident report. *Id.* Teachers sent B.B. to Principal Irwin's office for shoving another student when he got frustrated. *Id.* B.B. informed Principal Irwin that the other student had called him a derogatory term. *Id.* Principal Irwin then gave B.B. an in-school lunch detention while requiring the other student to stay after school for a detention. *Id.*

Westbridge High School tried to get creative on how to reinforce its anti-bullying message when it could not determine specific offending students. For example, unknown students made posters nominating B.B. for homecoming queen. Def.'s Disc. Resp. to Pl.'s Interrog. No. 11. In response, Principal Irwin reminded students of the anti-bullying policy at a school-wide assembly and resent all students the anti-bullying policy to review. *Id.* Westbridge High School also relied on its teachers to control situations, especially in gym class. B.B. alleged that his shoes and headphones were taken from his gym locker at one point yet could not identify who the culprit was – or if the items had been stolen. *Id.* The teacher and Principal Irwin were aware of the incident in case any further evidence or developments from this were to be discovered. *Id.*

During winter break, the Blodgetts called and left a message for Principal Irwin stating that they needed to meet about B.B. Irwin Dep. at 14:12. B.B.'s parents had taken B.B. in for a psychological evaluation and the subsequent report stated that for B.B.'s emotional health, B.B.'s IEP would need changed for the rest of the year. Exhibit G ("Psychological Evaluation"). Principal Irwin responded, and set up a meeting with B.B.'s parents and Vickie Norton. Irwin Dep. at 14:14-16. On January 23rd, B.B.'s IEP was modified as follows:

1. Two aides will monitor the hallways when students are switching classes to monitor B.B.'s interactions with peers as he transfers class;
2. B.B. will attend an adapted physical education class in lieu of general physical education; and
3. B.B. will eat lunch in the Resource Room. The school will no longer use the 'buddy system' with B.B.

Exhibit H ("Ninth Grade Modified IEP"). After these changes, one incident occurred when Principal Irwin needed to send a previously offending student to serve his detention in the school resource room. Irwin Dep. at 15:16-18. Principal Irwin thought that the monitor would be able to properly supervise both B.B. and the other student. *Id.* at 15:20. However, the monitor reported that the other student called B.B. names and crumpled up B.B.'s paper. *Id.* at 15:12-14. Principal Irwin decided that the best course of action was to make the other student attend their already scheduled after-school detention. Irwin Dep. at 16:1-3. B.B. did not complain about the incident or any other new incidents. *Id.*

However, on February 20, 2020, B.B.'s parents called Westbridge High School again to say that the new accommodations did not stop the bullying. Irwin Dep. at 16:5-6. Vickie Norton quickly came up with a new modified plan and let B.B.'s parents know on February 28th. Exhibit

I (“Ninth-grade 2nd Modified IEP”). This modified plan also included that Vickie Norton would wait with B.B. for the school bus. B.B. Dep. at 19:3. B.B. and his parents made no further complaints to Westbridge. *Id.* at 19:3. But, on March 20, 2020, B.B.’s parents came to the school to request B.B.’s transcripts, withdraw him from Westbridge High School, and transfer him to Lakeside Academy. Irwin Dep. at 16:20-22. They then immediately brought this suit to request relief for compensatory damages, reimbursement of tuition and transportation to Lakeside Academy, and attorney’s fees. Pl.’s Compl. at 8. B.B. exhausted no administrative remedies before this suit was filed. Def.’s Answer at 13.

III. SUMMARY JUDGMENT STANDARD

Under Rule 56(a), summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Facts are material “if they might affect the outcome of the suit under the governing law.” *Stiles ex. Rel. D.D. v. Grainger Cty., Tenn.*, 819 F.3d 834, 847 (6th Cir. 2016) (internal quotations omitted). When deciding a motion for summary judgment, a court “must view the factual evidence and draw all reasonable inferences in favor of the non-moving party.” *Foster v. Bd. of Regents of Univ. of Mich.*, 952 F.3d 765, 779 (6th Cir. 2020) (quoting *Nat’l Enter., Inc. v. Smith*, 114 F.3d 561, 563 (6th Cir. 1997)). The court then examines “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* (quoting *DiCarlo v. Potter*, 358 F.3d 408, 414 (6th Cir. 2004)).

IV. LAW & ARGUMENT

The court should grant summary judgment for Westbridge for two reasons. First, B.B. and his parents failed to exhaust administrative remedies that are required prior to bringing this claim. Second, even if B.B. and his parents had properly exhausted administrative remedies, they cannot establish that Westbridge was liable for peer-on-peer disability harassment. However, B.B. cannot establish this because Westbridge was not deliberately indifferent to the harassment. Westbridge employed many measures to try to mitigate the peer harassment that involved proactive and disciplinary measures. Furthermore, in analyzing whether Westbridge was deliberately indifferent, the court should not second-guess Westbridge officials' disciplinary decisions. Therefore, the court should grant summary judgment for Westbridge.

A. The Court Should Grant Summary Judgment Because B.B.'s ADA Claim Rests on the Denial of FAPE, so He is Required to Exhaust Administrative Remedies Under the IDEA and He Did Not.

While B.B. has brought an ADA claim, he is seeking relief for the denial of a free and appropriate public education ("FAPE"). If an ADA claim is essentially seeking relief for the denial of a FAPE, then it triggers the Individuals with Disabilities Education Act's ("IDEA") exhaustion requirement. 20 U.S.C. § 1415(1); *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 754, 197 L. Ed. 2d 46 (2017). A FAPE is instruction tailored to meet a child's unique needs and sufficient supportive services to permit the child to benefit from the instruction. 20 U.S.C. § 1415(1); *Fry.*, 137 S. Ct. at 754. There are important policy reasons for exhaustion – it gives schools the opportunity to correct their own mistakes, affords the parties with the most expertise to fashion remedies, and is more efficient than suing in court. *Fry.*, 137 S. Ct. at 754.

When deciding whether a complaint seeks relief for the denial of a FAPE, the court looks to the "gravamen of the complaint." *Id.* at 755. The Supreme Court, in *Fry*, provides two questions

that courts can use to determine if the complaint against a school concerns the denial of a FAPE. *Id.* at 756. The first is “could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school – say, a public theater or library?” *Id.* (emphasis omitted). The second is “could an adult at the school – say, an employee or visitor – have pressed essentially the same grievance?” *Id.* (emphasis omitted). If the answer to these questions is “no,” then the complaint likely does concern FAPE. *Id.*

In this case, the answer to both of *Fry*’s questions is “no.” One of B.B.’s demands for relief included “equitable relief, including reimbursement for the cost of tuition and transportation for B.B. to attend Lakeside Academy.” Pl.’s Compl. at 8. This is a remedy for denial of a FAPE. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 238 (2009) (stating “what relief is ‘appropriate’ must be determined in light of the Act’s broad purpose of providing children with disabilities a FAPE, including through publicly funded private -school placements when necessary”); *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 8 (1993) (holding that the reimbursement can still be appropriate even when the State has not approved the child’s placement in a private school but has failed to provide the child a FAPE). Additionally, the complaint also rests on the failure of B.B.’s IEPs to fully protect him from harassment. This is not a concern that could arise had the alleged conduct occurred at a public facility that is not a school. And, for these same reasons, the answer to “can an employee have pressed the same grievances” must also be “no.”

Plaintiff’s argument that the complaint does not concern FAPE relies on the picking and choosing of facts to continue to avoid the exhaustion of administrative remedies. When looking at the entirety of the complaint, it is evident that the denial of a FAPE is the gravamen of the complaint. This is true even if some of the statements in the complaint could be brought under the ADA had they occurred individually. Additionally, B.B.’s argument that B.B. never invoked the

IDEA's administrative proceedings does not preclude a decision that the gravamen of the complaint concerns the denial of a FAPE. Rather, it is merely a clue that the court could use to conclude that the case involves FAPE quicker than if it has not. *Fry*, 137 S. Ct. at 757. Because the answer to both the *Fry* questions is "no," B.B. is required to exhaust his administrative remedies. Therefore, the court should grant Westbridge summary judgment.

B. The Court Should Grant Summary Judgment Because Westbridge Was Not Deliberately Indifferent to the Peer Harassment B.B. Experienced Since Its Actions Were Not Clearly Unreasonable in Light of the Circumstances.

For B.B. to be successful in establishing a peer-on-peer disability harassment claim under the Americans with Disabilities Act ("ADA"), he must prove five elements:

(1) the plaintiff is an individual with a disability, (2) he or she was harassed based on that disability, (3) the harassment was sufficiently severe or pervasive that it altered the condition of his or her education and created an abusive educational environment, (4) the defendant knew about the harassment, and (5) the defendant was deliberately indifferent to the harassment.

S.S. v. E. Ky. Univ., 532 F.3d 445, 454 (6th Cir. 2008). The deliberate indifference standard sets a high bar for a plaintiff to recover.¹ *Stiles ex. Rel. D.D. v. Grainger Cty., Tenn.*, 819 F.3d 834, 848 (6th Cir. 2016) (citing *Doe v. Galster*, 768 F.3d 611, 619 (7th Cir. 2014)). This is because "[i]t requires only that school administrators respond to known peer harassment in a manner that is not 'clearly unreasonable in light of the known circumstances.'" *Id.* (quoting *Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 649 (1999)). This is higher standard for a plaintiff to meet than a mere reasonableness standard. *Id.* A school must reasonably respond to peer harassment, but it is not required to eliminate all peer harassment. *Id.* at 851.

¹ The deliberate indifference standard that is used for peer-on-peer disability harassment is the same standard as used in sexual harassment cases. CITE.

1. Westbridge Was Reasonable Because It Took Affirmative Actions to Try to Stop B.B.'s Harassment.

Taking affirmative steps to address incidents of harassment is indicative of a reasonable response. *S.S. v. E. Ky. Univ.*, 532 F.3d 445, 455 (6th Cir. 2008). One way a school is clearly unreasonable is when it makes “no effort whatsoever either to investigate or put an end to harassment.” *Davis*, 526 U.S. at 648. The school giving different responses because of different facts in each incident is also a reasonable response. *S.S.*, 532 F.3d at 456. For a school to be found liable, the record would need to give rise to the conclusion that the school was deliberately indifferent “or that it had an attitude of permissiveness that amounted to discrimination.” *Id.* at 455-56.

For example, in *S.S.*, the Sixth Circuit affirmed the lower court’s decision to grant the school’s motion for summary judgment because the plaintiff had failed to demonstrate that the school had acted with deliberate indifference. *Id.* at 449. The plaintiff, a disabled student, sued the school over the school’s failure to mitigate peer harassment that led to the student leaving the school. *Id.* at 453. However, the school had taken affirmative steps to address the incidents of harassment. *Id.* at 455. Some of the affirmative steps the school took were speaking to students, holding mediation sessions, disciplining students, separating students, monitoring *S.S.*, calling offending students’ parents, and selecting topics for discussion at school assemblies. *Id.* The court held that these affirmative steps demonstrated that the school’s response was not clearly unreasonable – or deliberately indifferent. *Id.* at 456.

Here, Westbridge took numerous affirmative steps to try to mitigate B.B.’s peer harassment. Westbridge provided mandatory anti-bullying training for teachers prior to the school year starting. Westbridge ensured all resource room monitors and staff had a copy of the anti-bullying handbook. Westbridge tried a peer mediation between B.B. and an offending student.

Westbridge tried separating offending students from B.B. Westbridge tried in school and after school detentions for offending students. Westbridge tried talking to all students at a pep rally. Westbridge tried resending out the anti-bullying policy. Westbridge tried having B.B. talk to a counselor. Westbridge tried modifying B.B.'s IEP – twice. When B.B. left Westbridge, school officials did not even know of any continued harassment or complaints after the latest IEP change. These facts do not support an inference that Westbridge had an attitude of permissiveness that amounted to discrimination.

B.B. argues that Westbridge's reliance on *S.S.* "is misplaced because the school there took proactive steps, including increasingly harsh punishment against the aggressors, to deal with the harassment." Pl.'s Br. in Opp. at 5. This is an inaccurate characterization of Westbridge's actions. B.B. points specifically to Westbridge's failure to concretely determine who placed posters of B.B. nominating him for homecoming queen in the school hallways. But Westbridge had addressed all students about the need to adhere to the anti-bullying policy because it was unable to determine and discipline a specific student for this incident. B.B. also claims that the school did not reasonably respond to the field trip incident by separating the students from B.B. However, this is one of the affirmative steps the court considered in *S.S.* to show that the school did not act with deliberate indifference. B.B. also claims that sending a previous offending student to the resource room that B.B. was in to eat lunch was unreasonable. While harassment did occur, it was reasonable for Westbridge to not foresee that it would occur given that B.B. was being monitored.

B.B.'s reliance on *Patterson v. Hudson Area Sch.*, 551 F.3d 438 (6th Cir. 2009), is misguided. B.B. acknowledges that the school in *Patterson* "was deliberately indifferent to pervasive peer-on-peer harassment against a student because it *largely responded to the harassment by giving ineffective verbal reprimands* to the perpetrators." Pl.'s Br. in Opp. at 3

(emphasis added). As discussed above, Westbridge took numerous and varied proactive measures to respond to harassment. These responses were not “ineffective verbal reprimands.” As such, B.B.’s own words describe why the court cannot rely on *Patterson* as an analogous case.

Westbridge tried to put an end to B.B.’s harassment and took affirmative steps to end the harassment. Westbridge did not have an attitude of permissiveness that amounted to discrimination. Consequently, Westbridge cannot be found to have been deliberately indifferent.

2. The Court Should Not Second-Guess Westbridge Officials’ Disciplinary Judgments Because They Were Not Clearly Unreasonable.

Courts consistently hold that when deciding if a school has acted clearly unreasonable considering the circumstances, they should not “second-guess school officials’ disciplinary judgments.” *Stiles ex. Rel. D.D. v. Grainger Cty., Tenn.*, 819, F.3d 834, 849 (6th Cir. 2016); *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 648-49 (1999); *Patterson v. Hudson Area Sch.*, 551 F. 3d 438, 446 (6th Cir. 2009); *Brooks v. Skinner*, 139, F. Supp. 3d 869, 883 (S.D. Ohio 2015); *see also Doe v. Hamilton Cty. Bd. of Educ.*, 329 F. Supp. 3d 543, 570 (E.D. Tenn. 2018) (stating “the standard is not an open invitation for courts, which are often unacquainted with the realities and constraints on school discipline, to second-guess school actions with the benefit of hindsight”). Nor should the court “require expulsion in every case of misconduct.” *Vance v. Spencer Cty. Pub. Sch. Dist.*, 231 F.3d 253, 260 (6th Cir. 2000); *Mathis v. Wayne Cty. Bd. of Educ.*, 782 F. Supp. 2d 542, 549 (M.D. Tenn. 2011).

It is reasonable for a school to vary the decision to punish and the level of punishment “based on school officials’ conversations with alleged offenders and eyewitnesses, the offending student’s record of similar behavior, and school officials’ evaluation of the severity of the conduct[.]” *Stiles*, 819 F.3d at 849. In *Stiles*, the Sixth Circuit affirmed the lower court’s determination to grant summary judgment to the school because the plaintiffs failed to provide

sufficient evidence to demonstrate the school acted with deliberate indifference. The court specifically found that on the deliberate indifference element the plaintiffs “failed to create a triable issue.” *Id.* The court noted that while it found that the factors the defendants considered in the decision to punish and the level of punishment to be reasonable, it also “should not second-guess school officials’ disciplinary judgments.” *Id.*

Here, Westbridge considered the facts of each situation to determine whether to discipline and the severity of the discipline. This can be clearly seen in the facts in this case. At one-point B.B. retaliated against another student who made fun of him by shoving the student. B.B. received two lunch detentions while the other student was required to have an after-school detention. While Westbridge did not notify B.B. and his parents when students were disciplined, Westbridge did discipline multiple students with detentions. Additionally, Westbridge made one student attend peer mediation with B.B. as a form of discipline when the incident involved another student making harassing comments towards B.B. In a situation where Westbridge could not determine the responsible student, it discussed the anti-bullying policy with students and resent all students the anti-bullying policy. Thus, here, like in *Stiles*, Westbridge school officials considered reasonable factors in determining whether to discipline and how severe to discipline. Because the court should not second-guess school officials’ disciplinary judgments, it should not question whether the school officials should have chosen other forms of discipline. Nor should it require more severe punishment such as suspension or expulsion of offending students.² Consequently, the court should find that Westbridge was not clearly unreasonable considering the circumstances, and the court should grant summary judgment for Westbridge.

² This was one of B.B.’s parents requests of Westbridge. B.B.’s parents asked Westbridge High School’s principal James Irwin to implement a progressive discipline plan that escalated discipline for repeat offenders to start to suspend students. Irwin Depo. At 15:3-5. Principal Irwin declined this request because it did not allow him to properly consider all particular facts of the incident. Irwin Depo. At 15:5-7.

V. CONCLUSION

Westbridge Local School District reasonably tried to mitigate the peer harassment B.B. faced while he attended Westbridge High School. It used many affirmative methods to try to make B.B.'s time at Westbridge High School successful. While it is frustrating and disappointing that B.B. continued to feel harassed at Westbridge High School, the harassment was not due to Westbridge being deliberately indifferent. Nor did B.B. and his parents properly exhaust administrative remedies that are in place for situations comparable to this one. For the reasons stated above, the court should grant Westbridge's motion for summary judgment.

Respectfully submitted,

/s/ Alicia Mallo
Attorney for Defendant Westbridge Local School District

Applicant Details

First Name **Colleen**
 Last Name **Mandell**
 Citizenship Status **U. S. Citizen**
 Email Address colleen.mandell@marquette.edu
 Address

Address
Street
606 W Wisconsin Ave. Unit 501
City
Milwaukee
State/Territory
Wisconsin
Zip
53202
Country
United States

Contact Phone Number **7735125760**

Applicant Education

BA/BS From **St. Norbert College**
 Date of BA/BS **May 2018**
 JD/LLB From **Marquette University Law School**
<http://law.marquette.edu>
 Date of JD/LLB **May 20, 2021**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **Marquette Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Giles Sutherland Rich Patent Law Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Rofes, Professor Peter
peter.rofes@marquette.edu
4145301105

Koenig, Melissa
melissa.greipp@marquette.edu
4142886996

This applicant has certified that all data entered in this profile and any application documents are true and correct.

August 21, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year law student at Marquette University Law School ranked in the top 10% of my class. I am currently clerking for the Honorable William J. Domina in Waukesha Circuit Court. Additionally, I am the Associate Justice of Administration for the Marquette Moot Court Association, and I am an editor for the Marquette Law Review. As well, I am a Research Assistant to Prof. Melissa Love Koenig, Professor of Legal Analysis and Writing. Throughout law school, I have been an active participant in various Marquette Legal Clinics, for which I was inducted in the Pro Bono Honors Society this spring.

My readiness to succeed as a law clerk is evidenced by both my practical and academic experience. My research and writing skills demonstrate excellence; equally important, I flourish in both individual and collaborative work environments. Working with the Wisconsin Department of Transportation, Marquette's Office of Economic Engagement, and clerking for the Honorable William J. Domina allowed me to excel with legal research and writing. With the Department of Transportation, I undertook research on issues including unjust enrichment, eminent domain, and contracts – crafting products that included complaints, demand letters, and memoranda. With the Office of Economic Engagement, I have conducted prior art searches and drafted reports detailing and justifying opinions regarding patentability, copyrightability, and marketability. Under Judge Domina, I drafted detailed memorandums regarding motions before the court, as well as writing proposed orders and decisions. In the academic environment, I have conducted research and writing individually and collaboratively as a member of the Marquette Law Review, as a competitor in Jenkins Moot Court Honors Competition, and as a research assistant to Prof. Love Koenig, a longstanding professor of legal research and writing. I collaborated successfully with an assigned classmate to research and draft an appellate brief. Moreover, guided by my passion for the link between mathematics and the law, I sought out the opportunity to conduct guided research on that intriguing relationship, working under Prof. Love Koenig. Prof. Love Koenig and I will be co-authors of an article we aim to publish in May 2021.

I am genuinely excited for the opportunity to succeed as a law clerk. Feel free to contact me via phone, email, or smoke signal, if I can provide any further information regarding my candidacy. To reiterate, I am exceedingly grateful.

Very truly yours,

/s/ Colleen Mandell

Colleen Mandell

Colleen E. Mandell

606 W. Wisconsin Ave., Milwaukee, Wisconsin 53203 • (773) 512-5760 • colleen.mandell@marquette.edu

EDUCATION

Marquette University Law School, Milwaukee, Wisconsin

Candidate for Juris Doctor, May 2021

GPA: 3.520/4.000

Rank: 19/191 (top 10%)

Journal: *Marquette Law Review*, Staff

Moot Court: Jenkins Moot Court Honors Competition, Spring 2020
Moot Court Executive Board, Associate Justice of Administration, 2020–2021
Giles Sutherland Rich Patent Law Moot Court Competition, Spring 2021

Honors: Dean's List, Spring 2019
Pro Bono Society, Spring 2020 (50+ hours *pro bono* service)

Activities: Research Assistant to Prof. Love Koenig, Legal Analysis and Writing, 3 semesters
Intellectual Property Society, member

St. Norbert College, De Pere, Wisconsin

Bachelor of Arts in Mathematics and English (Double Major), *magna cum laude*, May 2018

GPA: 3.758/4.000

Honors: Dean's List, 8 semesters
St. Norbert Honors Program, Honors

Leadership: Mathematics Differential Equations Researcher and Presenter
Mathematics Teaching Assistant

LEGAL EXPERIENCE

The Honorable William J. Domina, Waukesha, Wisconsin

Judicial Intern, June 2020 to Present

- Perform research and prepare memos regarding various motions and John Doe Proceedings
- Drafted orders and opinions in conjunction with Judge's guidance

Marquette University Office of Economic Engagement, Milwaukee, Wisconsin

Tech Transfer Intern, April 2019 to Present (Summers not included)

- Manage early stages of Intellectual Property process by conducting prior art searches and preparing comprehensive reports detailing background research and marketability to present to committee
- Manage overhaul and update of Intellectual Property Database

Department of Transportation Office of General Counsel, Madison, Wisconsin

Legal Research Analyst, May 2019 to August 2019

- Conduct research and give legal opinions on questions presented by attorneys
- Draft documents requested by attorneys including memorandums and discovery material
- Manage cases from start to finish with attorney supervision including client interviews, examining evidence, and generating final work product

Marquette Law Domestic Violence Project, Milwaukee, Wisconsin

Legal Volunteer, August 2018 to present

- Interview clients to identify and confirm legally relevant facts
- Draft evidentiary statements and summaries to be relied upon by attorneys during injunction hearings

Marquette Law Guardianship Clinic, Milwaukee, Wisconsin

Legal Volunteer, January 2019 to present

- Complete and submit drafted guardianship forms for supervising attorney
- Attend and facilitate client meeting

ADDITIONAL PROFESSIONAL EXPERIENCE

Professional Tutor, Milwaukee, Wisconsin, *Mathematics Tutor*, September 2017 to May 2019

Nature's Way Products, Green Bay, Wisconsin, *Purchasing Intern*, May 2017 to August 2018

COMMUNITY SERVICE

Big Brothers Big Sisters Mentor 2.0, Mentor, June 2019 to present

**Colleen Mandell
Marquette University Law School**

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Analysis, Writing, and Research 1	Jacob Carpenter	B+	3.0	
Torts	Alexander Lemman	B	4.0	
Criminal Law	Michael O'Hear	B	3.0	
Contracts	Peter Rofes	A-	4.0	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Bruce Boyden	A-	4.0	
Property	David Papke	A	4.0	
Legal Analysis, Writing, and Research 2	Melissa Love Koenig	B+	3.0	
Constitutional Law	Edward Fallone	A	4.0	

Summer 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Graduate Assistant	Melissa Love Koenig	S	1.0	Satisfactory/Unsatisfactory

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
American Legal History	David Papke	B+	3.0	
Intellectual Property Law	Bruce Boyden	A	4.0	
Appellate Writing & Advocacy	Erin O'Connor	B+	3.0	
Marquette Law Review		S	1.0	Satisfactory/Unsatisfactory
Graduate Assistant	Melissa Love Koenig	S	1.0	Satisfactory/Unsatisfactory
Evidence	Daniel Blinka	B+	3.0	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law 2: Speech and Equality	Peter Rofes	H	3.0	Honors/Pass/Not Pass
Marquette Law Review		S	1.0	Satisfactory/Unsatisfactory
Business Associations	Nadelle Grossman	H	3.0	Honors/Pass/Not Pass
Trademark and Unfair Competition	Katrina Hull	P	3.0	Honors/Pass/Not Pass
Graduate Assistant	Melissa Love Koenig	S	1.0	Satisfactory/Unsatisfactory

Colleen Mandell
St. Norbert College
Cumulative GPA: 3.75

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
2nd Lang Competency Met (SPAN)		AW	0	
Biology Elective		TR	1	Transferred from PACC B111 - Botany and Zoology I - St Marys University Minnesota
Biology Elective		TR	3	Transferred from PACC B110 - Botany and Zoology I - St Marys University Minnesota
Calculus + Analytic Geometry 2		AB	4	
Calculus and Analytic Geometry 2		TR	4	Transferred from PACC M151 - Botany and Zoology I - St Marys University Minnesota
Elementary Spanish 1		AW	4	Transferred from SPAN 203 - Intermediate Spanish 1 - Retroactively Awarded Credit
Elementary Spanish 2		AW	4	Transferred from SPAN 203 - Intermediate Spanish 1 - Retroactively Awarded Credit
General Psychology		AB	4	
Intermediate Spanish 1		AB	4	
Introduction to Honors		A	4	

Winter 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
History Elective		AW	4	Transferred from CLEP15 - History of US 1: Early to 1877 - College Level Exam Prog (CLEP)

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Calculus + Analytic Geometry 3		B	4	
Honors: Philosophy Foundations of Human Nature		AB	4	
Intermediate Spanish 2		A	4	
Macroeconomics		AB	4	

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Foundations Math		BC	4	
Honors: Theological Foundations		A	4	
Intro Computer Programming and Lab		A	4	
Intro to Literary Studies		A	4	
Tutorial		A	2	

Winter 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Tutorial		A	2	

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Feminist Theology		A	4	
Honors: World Religion Dialogue		A	4	
Probability and Statistics		AB	4	
Survey of U.S. Literature 2		AB	4	

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Complex Analysis		AB	4	
Survey of English Literature 1		A	4	
The Harlem Renaissance		A	4	
Topics: Methods of Applied Mathematics		A	4	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Differential Equations		A	4	
Environment and Society + Lab		A	4	
Literary Theory and Writing		A	4	
Race + Sex in Contemporary U.S. Texts		A	4	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Internship		S	4	Internship with Brown County District Attorney's Office
Literature of Service		A	4	

Mathematical Modeling	A	4
Shakespeare's Drama	B	4

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
English Portfolio Completion		S	0	
Honors Tutorial		S	2	
Hurston and Morrison		A	4	
Religion + Literature: Christian Mysticism		A	4	
Senior Examination		B	0	
Singles and Couples		A	4	

August 21, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Kindly accept this letter of recommendation on behalf of applicant Colleen Mandell, a member of the class of 2021 here at Marquette Law School. From the outset, moreover, know that my recommendation represents one that is unreserved and exceedingly enthusiastic. I encourage you to pursue this gifted, committed, principled, likeable person, an individual whose record of achievements, talents, and personal traits meshes superbly with the skill set needed to succeed as an appellate law clerk.

My insights concerning Mandell stem principally from having served as Mandell's instructor in CONTRACTS (a required 1L course) and CONSTITUTIONAL LAW 2: SPEECH & EQUALITY (a three-credit upper-division elective satisfying a requirement for graduation). Yet I likewise have interacted at substantial length and on multiple occasions with Mandell in Mandell's capacity as a member of the staff of our law review. For background: I have served as a full-time law professor here at Marquette since 1987. Through that historical lens I have witnessed a host of changes, many of them less than desirable, in the typical entering law student from then to now. That (d)evolution in part causes Colleen Mandell to shine even more brightly than I might have discerned three decades ago. Among some of those ways:

- Mandell manifests a legal intellect keen, deep, and restless. Not infrequently Mandell posed a question, or contributed an observation, that led classmates (and, yes, the professor) to see that which they theretofore had not fully seen, to appreciate that which they had not fully appreciated. Unsurprisingly, therefore, Mandell's classmates look up to Mandell, and for all the right reasons.
- Mandell grasps a central reality that eludes so many contemporary peers: Diligence remains a prerequisite for meaningful success. Hard work – not some shortcut invited by technological gadgetry or fueled by potentially dangerous substances – maximizes the prospects that an individual will achieve his / her / their full potential. This reality remains especially true for lawyers. Mandell gets all this. The outstanding grades Mandell earned in my classes (and the vast bulk of others Mandell has taken) represent but one example of how Mandell gets it. Ditto for the boatload of awards and distinctions Mandell has garnered.
- Mandell rarely if ever retreats from a spirited debate. Strikingly well-developed communication skills enable Mandell to convey, explain, and justify complex legal principles effectively and efficiently. And, no less important, respectfully.
- Mandell exhibits in connection with a vast range of educational and professional activities levels of emotional intelligence, resilience, and listening capacity beyond that which others exhibit.

I leave it to Mandell to pass along to you the host of other assets that bespeak the enormously high likelihood that Mandell will excel as a law clerk. Allow me nevertheless to conclude by mentioning one, a quality that time and again has proven the difference between a clerk becoming a wonderfully constructive member of a judicial chambers or, alas, an unsettling and destructive member: You and your staff will be delighted to interact with Mandell on a daily basis. Mandell exudes cheerfulness, professionalism, a collaborative nature, and a disarming wit. Arrogance and any form of condescension or sense of entitlement remain refreshingly absent. Not all my students – even the academically better students – work seamlessly with others. Colleen Mandell will fit comfortably into a chambers whose success depends on the collective effort of a small and diverse group of individuals.

To be unambiguous: You would be fortunate indeed to have Colleen Mandell working on your behalf. And to be bold: The quality of work emerging from your chambers will be more impressive because Mandell has been a part of the process that created the work.

Feel free to reach out should you seek to elicit additional thoughts or to probe more deeply any set forth above.

Very truly yours,

Peter K. Rofes
Professor of Law

Peter Rofes - peter.rofes@marquette.edu

August 21, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am honored to recommend Colleen Mandell for clerkship in your chambers. I have known Colleen since her first year at Marquette University Law School. Colleen did exceptionally well in both her first-year legal writing course and in Appellate Writing and Advocacy this past fall. She is also excelling as a member of the Marquette Law Review and as a competitor in our Jenkins Honors Moot Court Competition. I am confident that Colleen would be an outstanding judicial law clerk. She has the critical thinking, research and writing skills, and temperament to be an asset to chambers.

Colleen is a model law student: she is in the top ten percent of her class (ranked 19) at Marquette Law School and has superior legal research and writing skills. Colleen is a true intellectual who cares deeply for the law. I think so highly of Colleen that I asked her to co-author a law review article with me. Her research is meticulous, and she converses eloquently about her findings and analysis of the law. Colleen has a rare combination of deep intellectual thought and strong common sense and judgment. I appreciate that she has a strong mathematics background. She thinks logically and communicates clearly in her writing and her conversation. Again, the combination of proficiency in math and written and oral communication is special and would serve her well as a judicial law clerk. I certainly appreciate discussing Colleen's research with her, and I know she would be a good person with whom to discuss the nuances of the cases before the Court.

In addition to her work on the *Marquette Law Review*, Colleen will be participating on the Giles Sutherland Rich Patent Law Moot Court team this coming fall. She will be the Associate Justice of Administration for the Moot Court Association, managing the budget and travel of moot court competitors. That she was elected to this position shows how strongly her Law School peers value her. Colleen has already been inducted into the Pro Bono Society at Marquette. She values service to others and will be an asset to the legal community.

In sum, I give Colleen Mandell my highest recommendation. Please feel free to contact me at (414) 288-6996 if you have any questions or would like to discuss Colleen's application further.

Sincerely,

Melissa E. Love Koenig
Associate Professor of Legal Writing
Marquette University Law School

Melissa Koenig - melissa.greipp@marquette.edu - 4142886996

Colleen E. Mandell

606 W. Wisconsin Ave., Milwaukee, Wisconsin 53203 • (773) 512-5760 • colleen.mandell@marquette.edu

Attached please find a copy of a Brief for Petitioner. I created this document as a competitor in the Jenkins Honors Moot Court Competition. This document has been excerpted to exclude the caption, table of authorities, table of contents, issues presented, statement of the case, summary of the argument, my partner's section of the argument, and conclusion. The full length document may be provided upon request.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews the Seventeenth Circuit’s affirmation of the District’s denial of Smith’s motion to suppress the evidence obtained under the Controlled Substances Act (“CSA”) 21 U.S.C. § 847. In reviewing a denial of a motion to suppress this court reviews factual findings for clear error and legal conclusions *de novo*. *Ornelas v. United States*, 517 U.S. 690, 698 (1996). In the case before this Court, the facts are not in dispute, therefore *de novo* review is proper in reviewing the legal conclusions regarding the Fourth Amendment issues.

II. PATIENTS HAVE A REASONABLE EXPECTATION OF PRIVACY IN SENSITIVE MEDICAL INFORMATION HELD IN THE DATABASE.

Poppy Smith respectfully asks this Court to reverse the Circuit Court’s decision upholding the denial of the motion to suppress. This Court should hold patients have a reasonable expectation of privacy in their prescription drug records held by third parties, including the West Hampshire Controlled Substances Database (the “Database”) for two reasons. First, the sensitive nature of the private medical information contained in the Database creates a reasonable expectation of privacy. A reasonable expectation of privacy in private medical information exists because patients subjectively expect privacy in private and sensitive prescription records, and society recognizes that expectation of privacy as reasonable. Second, prescription records in the Database withstand the third party doctrine. Prescription records in the Database survive the third party doctrine because patients do not voluntarily convey the records and because the sensitive nature of the records deserves protection.

A. The Sensitive Nature of the Private Medical Information Contained in the Database Creates a Reasonable Expectation of Privacy.

The sensitive nature of the private medical information contained in the Database creates a reasonable expectation of privacy for two reasons. First, patients subjectively possess an expectation of privacy in medical records because prescription records reveal private and sensitive information. Second, society recognizes the expectation of privacy in prescription records as reasonable.

The Fourth Amendment guarantees the, “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. But this protection extends beyond mere places, “[f]or the Fourth Amendment protects people, not places.” *Katz v. United States*, 389 U.S. 347, 351 (1967). A warrantless search is unreasonable where there is a reasonable expectation of privacy. *Id.* at 361 (Harlan, J., concurring). A reasonable expectation of privacy exists where a person exhibits an actual expectation of privacy and society recognizes that expectation as reasonable. *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (adopting the reasonable expectation of privacy analysis created in *Katz*, 389 U.S. at 361 (Harlan, J., concurring)). This analysis applies in situations involving the transmission of electronic signals. *U.S. v. Jones*, 565 U.S. 400, 411 (2012). While individuals have a limited right to privacy in their medical records, the majority of circuit courts extend the constitutional right to privacy in medical and prescription drug records.¹

¹ *State v. Skinner*, 10 So. 3d, 1212, 1217 (La. 2009) (citing *Douglas v. Dobbs*, 419 F.3d 1097, 1102 (10th Cir. 2005), *cert denied* 546 U.S. 1138 (2006); *Herring v. Keenan*, 218 F.3d 1171, 1175 (10th Cir. 2000), *cert denied* 546 U.S. 840, 1173 (2001) (holding there is a constitutional right to privacy in an individual’s disclosure of information concerning her health); *Doe v. Southeastern Pennsylvania Trans. Auth.*, 72 F.3d 1133, 1137 (3d Cir. 1995) (holding an individual using prescription drugs has a right to expect information will remain private), *cert. denied* 519 U.S. 808; *Anderson v. Romero*, 72 F.3d 518, 522 (7th Cir. 1995); *Doe v. New York*, 15 F.3d 264, 267 (2d Cir. 1994); *Doe v. Attorney General of the United States*, 941 F.2d 780, 795–96 (9th Cir. 1991), *vacated on other grounds sub nom. Reno v. Doe* 518 U.S. 1014 (1996)).

American patients subjectively believe they are entitled to privacy within their medical and prescription records. In fact, patients subjectively believe care providers are ethically and legally obligated to protect privacy—92.7 percent of patients believe care providers have a legal and ethical responsibility to protect patients’ medical records and privacy information.² Consequently, the subjective belief that care providers are legally obligated to protect medical privacy creates a reasonable subjective expectation of privacy in medical records.

Moreover, patients have a reasonable expectation of privacy in medical and prescription records, which is societally recognized and enshrined in American law. The Hippocratic Oath originated during the fourth century B.C.E. setting the professional conduct for physicians. The original Hippocratic Oath required a physician to keep all private things secret “whether in connection with [] professional practice or not.”³ In keeping with the spirit of the Hippocratic Oath, Congress passed the Health Insurance Portability and Accountability Act (HIPPA) to protect at risk electronic health information and guarantee individuals protected health information.⁴ These professional medical standards encoded in American law create a societal expectation of privacy in all records pertaining to medical treatment.

Prescription records entail the same privacy concerns as medical records, creating a reasonable expectation of privacy. Prescription records reveal more than just the medication prescribed including private medical information; the medication can be used to infer private medical information like patients’ illnesses. *Douglas v. Dobbs*, 419 F.3d 1097, 1102 (10th Cir.

² New London Consulting, Fair Warning, *How Privacy Consideration Drive Patient Decisions and Impact Patient Care Outcomes* 10 (Sept. 13, 2011), <http://www.fairwarning.com/whitepapers/2011-09-WP-US-PATIENT-SURVEY.pdf>.

³ U.S. Nat’l Library of Med., *Greek Medicine: The Hippocratic Oath* (Michael North trans. 2002), https://www.nlm.nih.gov/hmd/greek/greek_oath.html (last updated Feb. 7, 2012). R. 20.

⁴ *Health Insurance Portability & Accountability Act*, N.H. Dep’t of Health and Human Servs. (2016), <https://www.dhhs.nh.gov/oos/hipaa/index.htm>; Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, 110 Stat. 1936 (2012).

2005). Drugs tracked as controlled substances and listed in the Database treat a wide variety of medical conditions. Controlled substances treat the following medical conditions—gender identity disorder, AIDS, cancer, trauma and stress disorders, anxiety, alcohol addiction, opiate addiction, attention deficit hyperactivity disorder, obesity, chronic or acute pain, epilepsy and seizure disorders, testosterone deficiency, delayed puberty, narcolepsy, insomnia, and migraines.⁵ Private information like a medical diagnosis deserves Fourth Amendment protection, and prescription records that reveal a medical diagnosis create a reasonable expectation of privacy relied upon by the individual and accepted by society.

Although Poppy Smith is accused of doctor-shopping, she maintains a subjective expectation of privacy in her medical and prescription records. Smith sought treatment from medical professionals with the same expectation of privacy that 92.7 percent of American patients believe they are owed. In seeking treatment, Smith expected that the Database may be used by medical professionals to determine whether or not to prescribe controlled substance medications. Her belief medical professionals may check the Database did not create an expectation that those medical and prescription records might be investigated by the Burlington Police (“the Officers”) and the Drug Enforcement Administration (“the DEA”).

Thus, Smith maintains a subjective expectation of privacy in the sensitive nature of the private medical information contained in the Database creates a reasonable expectation of privacy for two reasons. First, patients subjectively possesses an expectation of privacy in medical records because prescription records reveal private and sensitive information. Second, society recognizes the expectation of privacy in prescription records as reasonable.

⁵ Brief for American Civil Liberties Union, et. al as Amici Curiae Supporting Respondent-Appellant, U.S. Dep’t of Justice v. Michelle Jonas, No. 19-1243, add. A (1st Cir. 2019).

B. The Reasonable Expectation of Privacy in Prescription Records Held in the Database Survives the Third Party Doctrine.

Patients' expectation of privacy in their prescription records survives the third party doctrine. The nature of the prescription records as medical documents indicates an expectation of privacy, and patients do not voluntarily expose their prescription records to the public at large.

An individual has a reasonable expectation of privacy in records held by a third party where (1) the nature of the records indicates an expectation of privacy, and (2) the individual did not voluntarily expose the records to the public at large. *Carpenter v. United States*, 138 S. Ct. 2206, 2219–20 (2018). The warrant requirement applies where an individual has a reasonable expectation of privacy in records held by a third party. *Id.* at 2221–22. The third party doctrine, “stems from the notion that an individual has a reduced expectation of privacy in information knowingly shared with another,” *Id.* at 2219 (emphasis added), which reduces a reasonable expectation of privacy. *United States v. Miller*, 425 U.S. 435, 442 (1976). However, “diminished privacy interests [do] not mean that the Fourth Amendment falls out of the picture entirely.” *Riley v. California*, 573 U.S. 373, 392 (2014). A third party’s mere possession of records does not nullify an individual’s reasonable expectation of privacy. *Carpenter*, 138 S. Ct. at 2220. Some personal records are so private, even when entrusted to another, an individual retains some amount of protection of the privacy. *Big Ridge, Inc. v. Federal Mine Safety & Health Review Comm’n*, 715 F.3d 631, 649 (7th Cir. 2013).

1. The reasonable expectation of privacy survives the third party doctrine because records held in the database are not voluntarily conveyed by patients.

Smith maintains her expectation of privacy in her prescription records because she did not voluntarily convey the information to the Database. Patients in seeking medical care through the use of a prescription do not voluntarily convey information to the Database. Further, patients do

not voluntarily convey information to the Database because they lack agency in conveying information to the Database.

The third party doctrine applies only when a person voluntarily conveys information to a third party. *Miller*, 425 U.S. at 422–44. Only then does the person accept the risk that the other will convey the information to a third party. *Id.* at 443. Specifically, in *Miller*, the Court held there is no legitimate expectation of privacy in checks voluntarily conveyed to a bank as a negotiable instrument to be used in commercial transactions. 425 U.S. at 1624. Similarly, in *Smith*, the Court held there is no legitimate expectation of privacy in dialed telephone numbers because a person voluntarily conveys the information to the phone carrier without an expectation the numbers will remain secret. 442 U.S. at 743–44.

Information that is a pervasive and inescapable part of daily life undermines the underlying rationale of voluntary exposure. *Carpenter*, 138 S. Ct. at 2200. As one court states, “[a] decision to use a bank may be voluntary. A decision to use a hospital for emergency care is not.” *Thurman v. State*, 861 S.W.2d 96 (Tex. App. 1993). Patients’ disclosure of health information for the purposes of diagnosis does not violate a reasonable expectation of privacy in that data. *Ferguson v. City of Charleston*, 121 S. Ct. 1281, 1288 (2001) (holding patients reasonably expect privacy in healthcare related information voluntarily conveyed to the hospital for medical treatment).

Patients, in accessing medical care through a prescription, do not voluntarily convey that information to the Database. Unlike the check in *Miller* and the dialed telephone numbers in *Smith*, a patient does not seek medical treatment expecting information to be conveyed to a third party. The decision to seek medical care and take prescriptions as directed by a physician’s determined treatment is not voluntary. Rather, the patient only voluntarily acts to decide between following the physician’s recommendations requiring a controlled substance or to receive no treatment at all

without an invasion of privacy. In essence, a person must decide between leaving an ailment untreated, thereby maintaining her privacy, or pursuing treatment, exposing her medical history to a third party. In fact, many patients exercise privacy protective behaviors, putting their own health at risk to avoid conveying information to a prying eye.⁶ For example, patients request physicians to not record a health problem, seek another physicians to avoid telling their regular physician about a health condition, and altogether avoid medical tests. *Id.* These protective behaviors result from the fear that medical information will be used against them as the Database mandates physicians record controlled substance prescriptions. *Id.* Therefore, by seeking medical treatment, patients do not voluntarily convey prescription records to a third party.

Thus, patients maintains their expectation of privacy in her prescription records because she did not voluntarily convey the information to the Database.

2. The reasonable expectation of privacy survives the third party doctrine because the nature of the database records sought by the State deserves protection.

The nature of the database records sought by the State deserves protection thus maintaining patients' reasonable expectation of privacy in the face of the third party doctrine. Patients maintain their reasonable expectation of privacy in prescription records in the Database records for four reasons. First, prescription records are deeply revealing of an individual's private life. Second, prescription records have extensive depth, breadth, and comprehensive reach. Third, prescription records are collected by the Database inescapably and automatically. Finally, the prescription records in the Database present a remarkably easy, cheap, and efficient investigative tool compared to traditional investigative methods.

⁶ Anne Sunderland, *Americans Have Acute Concerns about the Privacy of Personal Health Information: However, Consumers Are Willing to Share Information If It Benefits Their Health*, Cal. Health Care Found. (Nov. 9, 2005), <https://www.chcf.org/press-release/americans-have-acute-concerns-about-the-privacy-of-personal-health-information/>.

Whether the nature of records held by a third party deserves protection requires analysis of the given category of information. A category of information is protected upon weighing whether the information (1) has a deeply revealing nature, (2) possesses depth, breadth, and comprehensive reach, (3) results from an inescapable and automatic form of data collection, and (4) presents a remarkably easy, cheap, and efficient investigatory tool compared to traditional models. *Carpenter*, 138 S. Ct. at 2217–20, 2223; Paul Ohm, *The Many Revolutions of Carpenter*, 32 Harv. J. Law & Tech. 357, 378 (2019).

a. The nature of prescription records deserves protection because they possess a deeply revealing nature.

Prescriptions in the Database are records deserving protection because of their deeply revealing nature. Prescription records deeply reveal information about patients’ health and current medications, which lies at the center of the privacies of life for many Americans.

The unique nature of certain records overcomes the fact that information is held by a third party. Looking to the intrinsic nature of the information, *Carpenter* protects information “deeply revealing” of a person’s private trait. 138 S. Ct. at 2223. The Fourth Amendment protects information that provides an “intimate window into a person’s life” exposing movements and deeply personal associations. *Id.* at 2217. Digital data holds the privacies of life for many Americans, revealing particular movements as well as familial, political, professional, religious, and sexual associations. *Id.* Specifically, the Court notes “[t]here is a world of difference between the limited types of personal information addressed in *Smith* and *Miller* and the exhaustive chronicle of . . . information . . . collected . . . today.” *Id.* at 2219.

In particular, prescription records are so intensely private that they are entitled to protection. “[P]rescription information maintained by [a Database] is intensely private as it connects a person’s identifying information with the prescription drugs they use.” *Or. Prescription*

Drug Monitoring Program v. U.S. Drug Enf't Agency, 998 F. Supp. 2d 957, 966 (D. Or. 2014), *reversed on other grounds*, 860 F.3d 1228 (9th Cir. 2016). By obtaining prescription records for individuals, a person could determine the privacies of a patient's life. *Id.* The distinction between medical records and prescription information is nearly meaningless. In fact, "it is difficult to conceive of information that is more private or more deserving of Fourth Amendment protection." *Id.*

Prescription records deeply reveal intensely private information about the state of patients' health and their current medications. In fact, prescription records stored in the Database can reveal a patient's particular condition by determining the typical uses for that medication. The Database stores records of controlled substances that, "can be used to treat a multitude of medical conditions including AIDS, psychiatric disorders, chronic pain, drug or alcohol addiction, and gender identity disorder." *Id.* at 960. These medical conditions are the type of information that constitute the privacies of life for many Americans, and thus prescription records are the type of information the Fourth Amendment protects.

Prescriptions in the Database are records that deserve protection because of their deeply revealing nature. Prescription records deeply reveal information about patient's health and current medications at the center of what constitutes the privacies of life for many Americans.

b. The nature of prescription records deserves protection because it possesses depth, breadth, and comprehensive reach.

Prescription records in the Database possess depth, breadth, and comprehensive reach that deserve protection. The prescription records stored in the Database create an all-encompassing record for an extensive number of West Hampshire citizens stored for an unspecified amount of time.

Depth measures the detail and precision of the stored information. Ohm, *supra*, at 372. Digital data creates “[a]n all-encompassing record of the holder’s whereabouts.” *Carpenter*, 138 S. Ct. at 2218. Breadth looks to how frequently the data is collected and how long the data was recorded. Ohm, *supra*, at 372. Lastly, comprehensive reach measures the number of people tracked in the database. *Id.* at 373. Digital data, “continually log[s] for all of the 400 million devices in the United States—not just those belonging to persons who might happen to come under investigation.” *Carpenter*, 138 S. Ct. at 2218. The data is retained and accessible to police for years. *Id.*

In the present case, the Database contains depth, breadth, and comprehensive reach because it stores an all-encompassing record of every controlled substance logged by every physician in West Hampshire for every West Hampshire resident maintained for an unspecified amount of time. The Database collects the physician’s name, the pharmacy’s contact information, the patient’s name, date of birth, age, address, the controlled substance prescribed, and the prescription’s strength and dosage form. Nationwide, state prescription drug monitoring programs like the Database at issue implicate more than 17% of Americans, who have had at least one opioid prescription filled.⁷ In 2017, there were almost 58 opioid prescriptions written for every 100 Americans. *Id.* Nationally, databases like West Hampshire’s tracks an all-encompassing record of a patient regardless of whether they might happen to come under investigation.

The prescription records stored in the Database create an all-encompassing record for an extensive number of West Hampshire citizens stored for an unspecified amount of time. Therefore,

⁷ Ctr. Disease Control & Prevention, *Changes in Opioid Prescribing Practices*, Opioid Overdose: Prescribing Practices, <https://www.cdc.gov/drugoverdose/data/prescribing/prescribing-practices.html> (last updated Aug. 13, 2019).

prescription records in the Database possess the depth, breadth, and comprehensive reach that deserves protection.

c. **The nature of prescription records deserves protection because the Database inescapably and automatically collects information.**

Prescription records in the Database deserve protection because the information is collected by the Database through inescapable and automatic collection.

Information is not “truly ‘shared’ as one normally understands the term” because it is “indispensable to participation in modern society” and because the data is automatically and inescapably generated. *Carpenter*, 138 S. Ct. at 2220. Often, digital information is conveyed automatically such that, “there is no way to avoid leaving behind a trail of . . . data.” *Id.* The Court held, engaging with cell phone services is “indispensable to participation in modern society.” *Id.*

The private nature of prescription records should be protected because the Database inescapably and automatically collects the information without the patient’s volition. When a doctor prescribes a controlled substance to address a patient’s medical condition, the information is inescapably and automatically placed into the Database by the physician. Automatically, a significant trail of medical data is left behind. Moreover, like engaging with cellphones is indispensable to participation in American life, engaging with medical care and following a physician’s recommended treatment is indispensable to participation in modern society. Engaging in medical care is an inescapable reality of American life; in the past year, 84.3% of adults have had contact with a health care professional with 883.7 million total visits to a physician’s office.⁸ Following physician’s recommendations is just as indispensable where one in three patients are

⁸ Ctr. for Disease Control & Prevention, *Ambulatory Care Use and Physician Office Visits*, Nat’l Ctr. Health Stat., <https://www.cdc.gov/nchs/fastats/physician-visits.htm> (last updated Jan. 19, 2017).

hospitalized from failure to take medication as directed, resulting in 125,000 deaths every year.⁹ Thus, the inescapable nature of seeking medical care and the automatic collection of prescription records in the Database indicates that prescription records should be protected.

Therefore, prescription records in the database deserve protection because the information in the Database is inescapably and automatically collected.

d. The nature of prescription records deserves protection because the Database is remarkably easy, cheap, and efficient compared to traditional investigative tools.

Prescription records should be protected from a warrantless search because the Database is remarkably easy, cheap, and efficient to access compared to traditional investigative tools.

Modern surveillance is, “remarkably easy, cheap, and efficient compared to traditional investigative tools.” *Carpenter*, 138 S. Ct. at 2218. The third party doctrine cannot “mechanically apply” to newer forms of digital-age records that provide the government with powers of investigation unimaginable in the past. *Id.* at 2214, 2219. Before the digital revolution, officers seeking to pursue a suspect beyond a brief stretch of time, ““was difficult and costly and therefore rarely undertaken.”” *Id.* at 2217 (quoting *United States v. Jones*, 565 U.S. at 430 (Alito, J., concurring)). In the modern day, investigators can access a, “deep repository of . . . information at practically no expense.” *Carpenter*, 138 S. Ct. at 2218. As the government’s access to information has greatly expanded with the development of technological surveillance, this Court has interpreted the Fourth Amendment to preserve the same degree of privacy intended when it was originally adopted. *Id.* at 2214.

In the present case, prescription records in the Database should be protected because the Database provides officers easy access to information far beyond traditional investigative tools.

⁹ Script Your Future, *Medication Adherence* (2020), <https://www.scriptyourfuture.org/medication-adherence/>.

Remarkably, one officer noted, “[w]e wouldn’t have been able to do this without the help of the state database of controlled substance prescriptions. This information has been crucial to our investigation.” In the past, to collect such a wealth of information, officers needed to search prescription records one at a time from one pharmacy at a time. To investigate every pharmacy in the state compiling every patient’s prescription would be a costly and difficult task requiring an extended period of time. Now, without a warrant, and with the Database and a click of a button, an officer can access a deep repository of prescription information in an instant. Thus, because the Database provides easy access to records beyond traditional investigative tools, the Fourth Amendment protects prescription records in the Database.

Prescription records held in the Database are remarkably easy, cheap, and efficient compared to traditional investigative tools, indicating the necessity of protecting the information from a warrantless search.

The nature of prescription records held by the Database deserve protection for four reasons. First, prescription records deeply reveal an individual’s private life. Second, prescription records have extensive depth, breadth, and comprehensive reach. Third, the Database inescapably and automatically collects prescription records. Finally, the Database presents a remarkably easy, cheap, and efficient investigative tool compared to traditional investigative methods. Ultimately, patients maintain their reasonable expectation of privacy in prescription records because the nature of the Database records deserve protection.

In conclusion, this Court should hold patients’ expectation of privacy in their prescription records survives the third party doctrine. The nature of the prescription records as medical documents indicates an expectation of privacy, and patients do not voluntarily expose their prescription records to the public at large.

Applicant Details

First Name **Robert**
 Last Name **Mang**
 Citizenship Status **U. S. Citizen**
 Email Address rmangjd@gmail.com
 Address

Address
Street
10169 Maxine Street
City
Ellicott City
State/Territory
Maryland
Zip
21042

Contact Phone Number **202-880-0899**

Applicant Education

BA/BS From **University of Maryland-College Park**
 Date of BA/BS **May 2012**
 JD/LLB From **The George Washington University Law School**
<https://www.law.gwu.edu/>
 Date of JD/LLB **May 15, 2020**
 Class Rank **33%**
 Law Review/Journal **Yes**
 Journal(s) **Federal Communications Law Journal**
 Moot Court Experience **No**

Bar Admission

Admission(s) **Other**
 Other Bar Admission(s) **Not yet admitted**

Prior Judicial Experience

Judicial Internships/
 Externships **Yes**

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

Srour, Dani
sroure@sec.gov
202-551-4166
Gavoor, Aram
agavoor@law.gwu.edu
917-562-9230

References

Presiding Judge Roberto Naraja
Superior Court of the Northern Mariana Islands
670-235-4257 | rnaraja@nmijudiciary.com

Danielle Srour
Senior Counsel
Retail Strategy Task Force
Division of Enforcement
U.S. Securities and Exchange Commission
202-551-4166 | sroure@sec.gov

John Jared Garth
Associate General Counsel
Amtrak
202-253-4307 | jared.garth@amtrak.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 13, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my pleasure to apply for a judicial clerkship in your chambers. I received my law degree with honors from the George Washington University Law School in May 2020. In law school, I served as Executive Editor of my law journal and developed my research and writing skills through a variety of law clerk positions. I worked part-time in each of my last five semesters.

After graduation, I had the opportunity to clerk in the Commonwealth of the Northern Mariana Islands. Although still in the United States, learning a system of law which is a little different was an enriching experience. Seeing the distinctions between the law on the mainland and in the Northern Mariana Islands afforded me a better understanding of each. I have really enjoyed both the writing aspects of the position as well as the court's role as a neutral decision maker. I started law school eager to advocate for my client's position but since my internship at the Maryland Court of Appeals, I have been becoming more interested in which interpretation of the law and facts is actually correct.

I am excited for this opportunity to gain experience with federal law. Please find enclosed my resume, transcript, and writing sample. I have also included letters of recommendation from Professor Gavorr, Professor Fair, and Danielle Srour, an attorney I worked with prior to law school. I hope to have the opportunity to explain my qualifications further in an interview at your earliest convenience.

Sincerely,

[/s] Robert Mang

Enclosures

Robert Mang

10169 Maxine Street, Ellicott City, Maryland 21042 – 202-880-0899 – rmang3@gmail.com

EDUCATION

The George Washington University Law School -- J.D. *with honors*, Pro Bono Award: Gold (250+ hours) May 2020
GPA: 3.422 (3.867 Fall 2019)

Journal: Executive Editor, Federal Communications Law Journal – Vol. 72 (2019-2020)

Courses: Trial Advocacy, Complex Lit., Evidence, Federal Courts, Criminal Procedure, Admin Law

First-year: Completed 1L Year at the Catholic University of America

University of Maryland, College Park -- B.A. in Criminology and Criminal Justice

May 2012

EXPERIENCE

U.S. Small Business Administration LOAN SPECIALIST

Feb. 2021 – Present

- Evaluate applications for relief under the CARES Act utilizing credit history, tax returns, and cash-flow analysis

Superior Court of the Northern Mariana Islands, Judge Roberto Naraja JUDICIAL LAW CLERK Oct. 2020 – Oct. 2021

- Researched and drafted decisions; prepared bench memorandum concerning evidentiary questions and substantive law; co-chaired committee to create time standards; served on probation operating procedures working group

Municipal Securities Rulemaking Board LAW CLERK

Feb. 2020 – July 2020

- Prepared memoranda examining the legislative history of an assortment of MSRB rules from inception to present

Communications Workers of America LAW CLERK

Aug. 2019 – Feb. 2020

- Assisted in drafting a brief for a NLRB hearing concerning Section 7 rights to audio record a disciplinary hearing; as well as a comment submitted in opposition to a proposed rule modifying the election process

Mooney, Green, Saindon, Murphy & Welch, P.C. LAW CLERK

May – July 2019

- Researched and analyzed the distinctions between a bill and two proposed amendments which would reform the process for rehabilitating multiemployer ERISA plans
- Drafted a post-arbitration brief in a dispute involving CBA interpretation after a failure to promote

D.C. Office of Human Rights LAW CLERK

Feb. – May 2019

- Drafted investigative documents, reviewed party submissions, and performed fact-specific research for employment discrimination issues under the DC Human Rights Act

U.S. Securities and Exchange Commission, Division of Enforcement SPRING HONORS INTERN

Feb. – April 2019

- In my second internship of the semester, I drafted a district court motion to return recovered funds to harmed investors; drafted action memorandum for commission approval summarizing steps taken and applicable law
- ANALYST/PARALEGAL Aug. 2012 – Nov. 2014: Reviewed tips received and spotted issues, researched case history, and identified connections to existing investigations in writing memorandum recommending next steps and additional leads to a supervising attorney

Amtrak, Office of General Counsel LAW CLERK

May – Nov. 2018

- Performed legal research concerning employment law issues, contracts, arbitration, and privacy issues

The Court of Appeals of Maryland, Chambers of Judge Irma S. Raker (Ret.) INTERN

Jan. – April 2018

- Helped draft an opinion pertaining to a witness being compelled to testify after invoking the Fifth Amendment

Mang Photo PROFESSIONAL PHOTOGRAPHER

Nov. 2014 – May 2020

- Provide professional photography services to more than 130 wedding clients in a high-pressure field

Community Service: Christian Legal Aid of the District of Columbia (Sept. 9 2016 to Feb. 8 2019), Veterans Consortium Pro Bono Program (Aug. 25 2017 to Sept. 7 2018), and Bankruptcy Assistance Center (Sept. 21 2018 to Nov. 30 2018).

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G44899647
Date of Birth: 24-DEC

Date Issued: 01-FEB-2021

Record of: Robert Edward Mang III III

Page: 1

Student Level: Law
Admit Term: Fall 2017

Issued To: ROBERT MANG
264 16TH STREET SE
WASHINGTON, DC 20003-1552

REFNUM:44936327

Current College(s): Law School
Current Major(s): Law

Degree Awarded: J D 17-MAY-2020
Major: Law

WRITING REQUIREMENT MET (6413)
EXPERIENTIAL REQUIREMENT MET

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
NON-GW HISTORY:				

2016-2017 Catholic University of America

LAW 6202	Contracts I	3.00	TR	
LAW 6203	Contracts II	3.00	TR	
LAW 6206	Torts	4.00	TR	
LAW 6212	Civil Procedure I	3.00	TR	
LAW 6213	Civil Procedure II	3.00	TR	
LAW 6216	Legal Research And Writing	2.00	TR	
LAW 6217	Introduction To Advocacy	2.00	TR	
LAW 6230	Evidence	4.00	TR	
Transfer Hrs: 24.00				
Total Transfer Hrs: 24.00				

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2017

Law School
Law

LAW 6208	Property Glicksman	4.00	A-	
LAW 6210	Criminal Law Solove	3.00	B+	
LAW 6214	Constitutional Law I Cheh	3.00	B+	
Ehrs 10.00 GPA-Hrs 10.00 GPA 3.467				
CUM 10.00 GPA-Hrs 10.00 GPA 3.467				
Good Standing				
THURGOOD MARSHALL SCHOLAR				
TOP 16%-35% OF THE CLASS TO DATE				

Spring 2018

Law School
Law

LAW 6232	Federal Courts Gavoor	3.00	A	
LAW 6250	Corporations Mitchell	4.00	A-	
LAW 6268	Employment Law Schoenbaum	3.00	B	
Ehrs 10.00 GPA-Hrs 10.00 GPA 3.567				
CUM 20.00 GPA-Hrs 20.00 GPA 3.517				
Good Standing				
THURGOOD MARSHALL SCHOLAR				
TOP 16%-35% OF THE CLASS TO DATE				

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
Summer 2018				

LAW 6218	Professional Responsblty/Ethic Fairfax	2.00	A	
LAW 6400	Administrative Law Gavoor	3.00	B	
Ehrs 5.00 GPA-Hrs 5.00 GPA 3.400				
CUM 25.00 GPA-Hrs 25.00 GPA 3.493				

Fall 2018

LAW 6252	Securities Regulation Sibay	3.00	B+	
LAW 6256	Mergers And Acquisitions Mahon	2.00	B+	
LAW 6285	Business Bankruptcy & Reorg. Mitchell	3.00	B	
LAW 6657	Fed Communication Law Jrl Note	1.00	P	
Ehrs 9.00 GPA-Hrs 8.00 GPA 3.208				
CUM 34.00 GPA-Hrs 33.00 GPA 3.424				

Spring 2019

LAW 6236	Complex Litigation Trangsrud	3.00	B-	
LAW 6266	Labor Law Babson	2.00	B	
LAW 6272	Employee Benefit Plans Silverman	2.00	B	
LAW 6402	Antitrust Law Longwell	3.00	B+	
LAW 6657	Fed Communication Law Jrl Note Han	1.00	P	
Ehrs 11.00 GPA-Hrs 10.00 GPA 3.000				
CUM 45.00 GPA-Hrs 43.00 GPA 3.326				
Good Standing				

Summer 2019

LAW 6640	Trial Advocacy Gilligan	3.00	B+	
Ehrs 3.00 GPA-Hrs 3.00 GPA 3.333				
CUM 48.00 GPA-Hrs 46.00 GPA 3.326				

***** CONTINUED ON PAGE 2 *****



Edmundson
University Registrar



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 11, 2022

Your Honor:

With great enthusiasm I recommend Robert Mang, with whom I worked at the U. S. Securities and Exchange Commission, for a clerkship position in your chambers.

I am an attorney with 20 years of corporate finance experience in private practice, plus 12 years of professional development experience at global law firms and 10 years of government experience. Over the course of my professional career I have mentored, taught, evaluated and worked with hundreds of law students as interns and summer associates as well as with countless young, mid-level and senior lawyers. I have the background to state with confidence that Robert has the intellect, curiosity, analytical abilities and personal skills and qualities to put him at the top of this list.

I have no doubt that Robert will thrive in your chambers and as an attorney. I was consistently impressed by his ability to understand complex financial concepts and their relation to our role at the SEC. He was also impressive in his ability to learn new technologies to help us be more efficient in our work. He voiced his opinion with clarity, orally and in writing, stayed calm under pressure, and synthesized complex information in a useful and practical way. His work was excellent and he was a valued and highly regarded contributor to our team.

Robert is honest and ethical. He has energy and a penchant for spirited debate, and he is a wonderful colleague. Over the years I have written many letters of recommendation but I cannot think of another where I feel as strongly about a candidate.

I would be happy to speak with you further about Robert's qualifications. My email is sroure@sec.gov and my telephone number is 202-551-4166.

Sincerely,

[s]*Dani Sroure*

Danielle R. Sroure

The George Washington University Law School
2000 H St NW
Washington, DC 20052

April 13, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to enthusiastically recommend Robert E. Mang III for a clerkship in your chambers. Robert's intellect, passion for the law, work ethic, and poise make him a top tier candidate.

I was Robert's professor in Federal Courts and Administrative Law courses at The George Washington University Law School. Despite being two of the most difficult course offerings at the university due to the breadth and complexity of the subject-matter, Robert excelled. He asked refined questions that were premised on an underlying comprehension of the readings. He provided thoughtful and correct answers to my Socratic questioning. I was particularly impressed by how he was able to balance the rigor of studying the law with his busy intern schedule, and his service on the Federal Communications Law Journal, a journal for which he serves as the Executive Editor.

In my numerous conversations with Robert, I have encouraged him to clerk. He is genuinely interested in the law and the judicial experience. His legal training and judicial intern experience have fostered in him an unusually strong ability to read and apply statutory schemes in practical settings. His work ethic was evinced by his consistent preparedness in class. I believe that your investment in him as a law clerk would yield splendid results in terms of his timely and thoughtful contributions to your legal research and writing needs.

Robert has the temperament to capably serve as a clerk. He is humble, yet assertive and thoughtful, yet timely in his responsiveness. He is disciplined and consistent. Moreover, he is mature and exercises sound judgment with minimal need of supervision. If you have any questions about or would like to discuss my unreserved recommendation of Robert, please do not hesitate to contact me at (917) 562-9230 or at agavoor@law.gwu.edu.

Sincerely,

Aram A. Gavoor
Professorial Lecturer of Law
202-994-9320
dtsuk@law.gwu.edu

Aram Gavoor - agavoor@law.gwu.edu - 917-562-9230

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

Entirely Self Edited Writing Sample

RICO's broad reach may make it the best statute to fight health care fraud, but could a new Act go further?

This paper will examine how prosecutors can best protect consumers and their insurance companies from health care fraud. It is an important question because despite prosecutors' success – the Department of Justice ("DOJ") obtained over \$3 billion in health care fraud judgments and settlements¹ in 2012 – health care fraud remains an enormous drain on both consumers' finances and the United States's economy as a whole. Some estimates indicate that as much as 10 percent of all health care costs may be fraudulent.² Prosecutors frequently rely on the False Claims Act, the Anti-Kickback Statute, and the Stark Self-Referral Law. While those statutes are often very potent tools, they are not without a glaring limitation. These laws only apply when the Federal Government is the victim of fraud but provide no protection to individual consumers or their insurance companies. Fortunately, while originally intended to protect Americans from mobsters, the Racketeer Influenced and Corrupt Organizations Act's ("RICO") broad reach is likely the best, and an equally potent tool, for both prosecutors and private plaintiffs to obtain justice where the federal government is not the victim. But as potent as RICO is, could a new statute which also has a mechanism for compensating whistleblowers actually be the best option?

The phrase "prosecutors" refers to numerous government actors. The Center for Medicare and Medicaid Services and the Office of Inspector General, both part of the U.S. Department of Health and Human Services, as well as other government agencies, are actively involved in prosecutions often led by the Department of Justice – including Main Justice, the United States Attorney's Offices, the Federal Bureau of Investigation and

¹ Michael Berry, Article, *Peeking Behind the Robes: A Not-So-Flattering Look at Medicare's Administrative Law Judges*, 12 IND. HEALTH L. REV. 65, 98 (2015) citing U.S. DEP'T OF HEALTH & HUMAN SERVS. & DEPT OF JUSTICE, HEALTH CARE FRAUD AND ABUSE CONTROL PROGRAM: ANNUAL REPORT FOR FISCAL YEAR 2012 1 (2013), archived at <http://perma.cc/S53L-X6TQ>.

² Joseph Avanzato, David Wollin, Article, *Health Care Fraud: Potential Pitfalls for Health Care Providers*, 44-JAN R.I. B.J. 9, 9 (1996).

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

others – to fight health care fraud. References to “prosecutors” will collectively refer to all of the federal government’s enforcement activities in the health care fraud arena.

Health care fraud includes a wide variety of nefarious activity. The most common health care frauds include billing for an unnecessary procedure or prescribing an excessive dosage of medication, charging for procedures and tests not performed, and prescribing unsolicited and unnecessary medical equipment to elderly patients.³ The False Claims Act⁴ is a *qui tam* law. *Qui tam* laws allow relators – private plaintiffs – to file suit on behalf of the government and receive between 15-30 percent of any judgement or settlement ultimately obtained.

Qui tam provisions have a long history. The first known citation to a *qui tam* law was the 695 C.E. declaration of King Wihtred of Kent which prescribed a penalty of a half a freeman’s earnings who worked on the Sabbath with half of that penalty going to an informer.⁵ Throughout history, *qui tam* laws have allowed private plaintiffs to sue on behalf of the sovereign – in England, the United States, and elsewhere – and receive a financial incentive for doing so. Like the False Claims Act, *qui tam* laws usually incentivize private plaintiffs to inform on those defrauding the government. RICO, lacks a *qui tam* provision, but perhaps the combination of the RICO framework with a new statute containing a *qui tam* provision would be the best tool for prosecutors?

The Anti-Kickback Act of 1986⁶ prohibits receiving any money, gift, or thing of value in exchange for favorable treatment in making a service referral when the federal government is the payer.⁷ What is commonly known as the Stark Self-Referral Law⁸ prohibits a physician from making referrals for health services to an

³ Christina Orsini Broderick, Note, *Qui Tam Provisions and the Public Interest: An Empirical Analysis*, 107 COLUM. L. REV. 949, 982-93 (2007).

⁴ The False Claims Act, 31 U.S.C. § 3729, et seq.

⁵ Qui Tam: The False Claims Act and Related Federal Statutes, Congressional Research Service, R40785 (August 6, 2009) available at <https://fas.org/sgp/crs/misc/R40785.pdf> citing Translated in Attenborough, THE LAWS OF THE EARLIEST ENGLISH KINGS 27 (1963); described in Plucknett, EDWARD I AND CRIMINAL LAW 31-2 (1960), and Beck, The False Claims Act and the English Eradication of Qui Tam Legislation, 78 NORTH CAROLINA LAW REVIEW 539, 567 (2000).

⁶ 41 U.S.C. § 51 et. seq.

⁷ U.S. Dep’t of Justice, Anti-Kickback Act of 1986, § 927 Criminal Resource Manual available at <http://www.justice.gov/archives/jm/criminal-resource-manual-927-anti-kickback-act-1986>

⁸ Social Security Act § 1877, 42 U.S.C. § 1395nn

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

entity with which he, she, or an immediate family member, has a financial relationship where Medicare or Medicaid is the payer unless an exception applies. All services are covered, including laboratory or diagnostic services; medical equipment; outpatient prescription drugs; speech, physical or occupational therapy; and inpatient or outpatient hospital services.⁹ It is beyond the scope of this paper, but in certain circumstances, an exception allows a physician to make such a referral and still lawfully receive payment from Medicare or Medicaid.

In addition to potential loss of licensure, monetary penalties or jail time, violators of any of these laws can also receive the “civil death penalty¹⁰” which leaves the violator unable to directly or indirectly bill Medicare or Medicaid for services rendered.¹¹ The “death penalty” can apply when a health care provider “is convicted under any law, of fraud in connection with providing health care services or products, obstructing a health care fraud investigation, or the unlawful manufacture or distribution of controlled substances.”¹² A minimum five-year exclusion from participating in the Medicare or Medicaid programs is required for health care fraud convictions or convictions under any state or federal law for abuse or neglect of patients.¹³ A criminal, versus civil, conviction under RICO, or for Mail, and/or Wire fraud, is a felony conviction which would likely result in a loss of licensure and accordingly the loss of the ability to participate in Medicare or Medicaid (and provide health care services) regardless of whether the Federal Government imposed the civil death penalty.

Federal prosecutors, aside from more directly related statutes, also commonly rely on the mail and wire fraud statutes, anti-money laundering laws, and laws protecting employee benefit plans to bring actions – especially when the federal government is not the victim. Despite the numerous statutes available to

⁹ Centers for Medicare & Medicaid Services, Physician Self-Referral available at <https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/index?redirect=/physicianselfreferral>.

¹⁰ Exclusion Statute, 42 U.S.C. § 1320a-7

¹¹ U.S. Department of Health & Human Services, Office of Inspector General, A Roadmap for New Physicians: Fraud & Abuse Laws available at <https://oig.hhs.gov/compliance/physician-education/01laws.asp>.

¹² *Joseph Avanzato, David Wollin, Health Care Fraud: Potential Pitfalls for Health Care Providers*, 44-JAN. R.I.B.J. 9, 12-13; *see generally* 42 U.S.C. § 1320a-7(b)(1)-(3).

¹³ *Id.*, *see generally* 42 U.S.C. § 1320a-7(a),(c)(3)(A).

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

prosecutors, not all of which have been discussed in this paper, RICO actions with mail or wire fraud as the predicate offense may be the best statutory avenue for prosecuting health care fraud when the government is not the victim.

II. RICO is a powerful tool for prosecutors

The best avenue for prosecutors to bring enforcement actions against health care providers who have defrauded individual consumers and health insurance companies, but not the government or the Medicare/Medicaid programs, may be under the Racketeer Influenced and Corrupt Organizations (“RICO”) statute. RICO was created in 1970 as Title IV of the Organized Crime Control Act. 18 U.S.C. §§ 1961-1968. Although the primary purpose of RICO is fighting organized crime, the Act offers tremendous flexibility. The diverse predicate acts which can form the basis of a RICO action can be grouped into five categories. First, violence; second, illegal goods or services (e.g., drugs, gambling, prostitution, illegal immigration); third, corruption in labor or management relations; fourth, corruption in government; and fifth, fraud.¹⁴ The type of racketeering activity prohibited by RICO includes both certain state-law offenses and the specific federal crimes provided as predicate offenses.¹⁵ The two most compelling features of the RICO statute, for this purpose, are the 1) harsh penalties provided for by the statute and 2) the broad reach of the Act. Although not relevant for prosecutors’ purposes, RICO provides for a private right of action. State law RICO causes of action are available in at least 33 states.¹⁶

A. Penalties Available under RICO

¹⁴ G. Robert Blakey, Article, *Time-Bars: RICO-Criminal and Civil-Federal And State*, 88 NORTE DAME L. REV. 1589, 1594 (2013) citing G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 300-06 (1982).

¹⁵ Victoria L. Safrana, Article, *RICO’s Extraterritorial Reach: The Impact of European Community V. RJR Nabisco*, 4 STAN. J. COMPLEX LITIG. 47, 48 (2016) citing § 1961(1).

¹⁶ *Introduction: RICO State by State: A Guide to Litigation Under the State Racketeering Statutes, Second Edition*. American Bar Association. Archived from the original on February 22, 2014. Available at https://web.archive.org/web/20140222015455/http://www.americanbar.org/publications/gpsolo_ereport/2012/november_2012/introduction_rico_state_by_state.html Retrieved April 4, 2020 at 6:54 p.m.

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

Aside from its breadth, the best reason for utilizing RICO are the harsh civil and criminal penalties provided under the statute by Congress. Criminal penalties encompass up to 20 years of prison time (or life, when permitted by the predicate offense), fines of up to \$250,000 or up to twice the gain or loss, and criminal forfeiture of ill-gotten gains.¹⁷ Defendants can also be ordered to pay restitution to the victims of the criminal enterprise, which is not always available under criminal statutes.¹⁸ RICO's provision of restitution is critical, as it allows for the victims of health care fraud to be made whole – at least monetarily. The civil portion of RICO provides for treble damages, “any person injured in his business or property by reason of a violation of section may sue therefor and shall recover threefold the damages he sustains”¹⁹ (18 U.S.C. § 1964(c)) like the False Claims Act, and RICO is modeled after antitrust law. Although, not relevant for prosecutors' purposes, private plaintiffs no doubt find RICO's provision for awarding attorney fees appealing. The ability, however, to recover litigation expenses, like under the False Claims Act and other health care fraud statutes, is a relevant consideration for prosecutors.²⁰

B. Broad Reach of RICO

RICO has long been recognized as a leading statute in fighting fraud, which is an area where other fraud deterrence statutes, outside of the False Claims Act and other health care fraud statutes, are scattered and often ineffective.²¹ Ironically, this reflects Congress' concern in creating RICO. The statute's legislative history reveals that Congress “was concerned an overly narrow statute” would not reflect the legislative intent of providing a sledgehammer to fight organized crime.²² Although RICO is frequently criticized as being overbroad, Congress' intention was just that, to create a broad tool for law enforcement. Senate debate focused on the statute being ineffective if not reaching crimes not always committed by organized criminals.²³ Both the

¹⁷ 18 U.S.C. § 1963.¹⁸ §§ 3556, 3663.¹⁹ Engstrom, 115 MICH. L. REV. at 667.²⁰ *Id.*²¹ Nora F. Engstrom, Article, *Retaliatory RICO and The Puzzle of Fraudulent Claiming*, 115 MICH. L. REV. 639, 645 (2017).²² Alexander M. Parker, Note, *Stretching RICO to the limit and beyond*, 45 DUKE L. J. 819, 831 (1996).²³ *Id.* at 831-832.

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

American Civil Liberties Union and the DOJ raised concerns that statute was “too broad and would result in a large number of unintended applications.” *Id.* Congress ultimately would adopt the DOJ’s proposed “model [enumerating] the generic clauses of crimes covered.”²⁴

To explain RICO’s elements in plain English, the key elements require²⁵:

- (a) “a “person” who has received income from a “pattern of racketeering activity” cannot invest that income in an “enterprise,”
- (b) a “person” cannot get or keep control of an “enterprise” by a “pattern of racketeering;”
- (c) a “person” who is employed by or associated with an “enterprise” cannot “conduct” the affairs of the “enterprise” through a “pattern of racketeering;” and
- (d) a “person” cannot “conspire” to violate RICO.”

Finally, the prohibited acts must fall within the domain of affecting interstate commerce.²⁶ In other words, it is unlawful to engage, or conspire to engage, in a pattern of racketeering (dishonest or fraudulent business dealings) as part of an on-going enterprise. These elements are “deceptively simple, however, [because] each concept is a term of art which carries its own inherent requirements of particularity.”²⁷

The text of RICO requires courts to liberally construe RICO in achieving its goals.²⁸ Where RICO’s meaning is clear, the statute undoubtedly controls but even where ambiguous, a Court is required to find a construction which allows the statute to achieve its purpose of providing greater remedies and new sanctions.²⁹ Courts must follow this command regardless of the nature of the suit.³⁰ It has even been used in landlord-tenant skirmishes, interchurch disputes, and domestic relations conflicts.³¹ Leading corporations, including Boeing,

²⁴ *Id.* citing S. REP. NO. 617, 91st Cong., 1st Sess. 121-22, 158 (1969).

²⁵ Blakey, 88 NORTE DAME L. REV. at 1605-1614.

²⁶ Hoppe, 107 NW. U. L. REV. at 1382 citing 18 U.S.C. § 1962(a)-(d).

²⁷ *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989).

²⁸ Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970).

²⁹ Blakey, 88 NORTE DAME L. REV. at 1598.

³⁰ *Id.*

³¹ *Id.* at 667.

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

General Motors, and American Express have faced RICO suits.³² Needless to say, this myriad of uses is not always well-received.

RICO requires continuing activity and “it is this factor of continuity plus relationship which combines to produce a pattern.”³³ Any person, not just a mobster, is prohibited from using money derived from a racketeering enterprise by § 1962.³⁴ Most health care fraud involves a pattern of continuing fraud closely related to the provision of health care services in an ongoing enterprise. Caselaw shows each fraudulent act would not be viewed as single scheme but rather an ongoing fraudulent enterprise. Take *Northwestern Bell*, where the trial court rejected that logic in finding each allegation of bribery to be a single scheme rather the pattern RICO required.³⁵ The Eighth Circuit affirmed but the Supreme Court reversed finding them to constitute a pattern because “they met the tests of “relatedness” and “continuity.””³⁶ It is the combination of “continuity” and “relationship” which creates the pattern.³⁷ A single patient is often the source of multiple instances of health care fraud. Health care fraudsters usually commit the same type of frauds against all their patients to form both relatedness and continuity throughout their organization.

RICO requires the “pattern of racketeering activity must somehow connect to “an enterprise” such as the operation of a hospital or a nursing home or other health care facility.”³⁸ The Supreme Court also reads the text of the statute in the broadest possible manner despite repeated attempts by lower courts to reduce the breath of the enterprise requirement.³⁹ Under RICO, “an enterprise is broadly defined to encompass any individual or legal entity, or group of individuals in fact.”⁴⁰ The term enterprise is explicitly defined in § 1961(4) as “includ[ing] any individual, partnership, corporation, association, or other legal entity, and any union or group

³² *Id.* at 667-68.

³³ *Id.*

³⁴ *Sedima*, 473 U.S. at 495.

³⁵ Parker, 45 DUKE L. J. at 835 citing *H.J., Inc. v. Northwestern Bell Tel. Co.*, 648 F. Supp. 419, 420 (D. Minn. 1986).

³⁶ *Id.*

³⁷ Kevin J. Murphy, Note, *The Resurrection of the “Single Scheme” Exclusion to RICO’s Pattern Requirement*, 88 NORTE DAME L. REV. 1991, 1994 (2013).

³⁸ Hoppe, 107 NW. U. L. REV. at 1380.

³⁹ Parker, 45 DUKE L. J. at 836; see e.g. *United States v. Turkette*, 452 U.S. 576 (1981).

⁴⁰ Safrana, 4 STAN. J. COMPLEX LITIG. at 48.

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

of individuals associated in fact although not a legal entity.”⁴¹ Notably, the statute uses the phrase “includes” to indicate the list is not exhaustive.⁴²

However, despite all of the benefits from RICO’s breadth and penalties discussed, the RICO statute, without a *qui tam* provision does not provide the same benefit of financial incentives available to relators under the False Claims Act. Perhaps a new statute, using the framework of RICO, along with a *qui tam* provision could be the tool prosecutors need?

III. RICO’s Limitations Require a New Statute

Health Care Fraud is often discreet and requires sophisticated knowledge which presents a delicate need for information from someone involved in the fraud to detect the wrongdoing. Common examples of health care fraud include administering and billing for an excessive dosage of medication or an unnecessary procedure, charging for procedures and tests not performed, and prescribing unsolicited and unnecessary medical equipment to elderly patients. All of these required detailed, inside knowledge to detect. Often a medical determination must be made, such as whether the dose of medication provided was inappropriate, which both prosecutors and private plaintiffs may lack the expertise to make.

Qui tam plaintiffs, however, who are immersed in the medical community with some level of medical training have the necessary expertise. They are often better able to identify health care fraud than prosecutors or private plaintiffs.⁴³ A further challenge lies in the enormous number of claims submitted. That volume is often enough to prevent the detection of the vast amount of fraud occurring in Medicaid and Medicare claims. The assistance of *qui tam* plaintiffs is essential to overcome the volume.⁴⁴ Physicians operate with a high level of

⁴¹ Parker, 45 DUKE L. J. at 836 citing 18 U.S.C. § 1961(4) (1994).

⁴² Hoppe, 107 NW. U. L. REV. at 1380 (2013) citing 18 U.S.C. § 1961(4).

⁴³ Broderick, 107 COLUM. L. REV. at 982-93.

⁴⁴ *Id.* at 984

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

autonomy, professional curtesy, and presumption of trust and integrity making health care fraud all the more difficult to detect.⁴⁵

Under a *qui tam* law like the False Claims Act, a relator receives 15 to 25 percent of the government's recovery. Frequently, relators are able to recover millions. Naturally, this is a powerful incentive. Aside from the financial incentive, the monetary reward mitigates relators' risk of retaliation and the harm to their careers that they likely will experience.⁴⁶

The vast majority of health care providers are hardworking and extremely ethical, and they certainly should not be characterized in the same way as mobsters. That said, the situation is in some ways similar to the environment in which RICO was created. Fortunately, claims of intentional harm are at best very rare, but patient harm through neglect or willful blindness is sadly more commonplace. Patient welfare aside, the economic harm caused by health care fraud is unmistakable. Medical care is becoming more and more complex, health care costs continue to rise, and limitations imposed by private or public insurance limit profit margins. The temptation to commit health care fraud, perhaps unaware of the illegality of the action, is enormous. The data is unmistakable. Health care fraud judgements and settlements annually reach the billions while much of fraud is not reflected in that figure because it goes undetected, prosecutors are not always able to take action due to resource constraints, or the current application of existing laws creates enforcement gaps.

The legislative history of the False Claims Act and related statutes is even more complex than RICO's history. *Qui tam* provisions date back almost to the beginning of time and create the right to receive a handsome bounty for taking action on behalf of the King. In this country's history, major attention was given to this statutory tool first during the Civil War and then during the Cold War as a mechanism for restraining otherwise rampant fraud in government contracting.

⁴⁵ *Id.*

⁴⁶ *Yerra v. Mercy Clinic Springfield Communities*, 536 S.W.3d 348 (Mo. App. S.D. 2017) (speaking to the dangers of retaliation whistleblowers face).

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

Extending the reach of *qui tam* past fraud directly harming the sovereign is at best a radical proposition. But on the hand, many laws do just that under a different name. Antitrust laws, which RICO is modeled upon, allow private parties to recover treble damages through private enforcement of pro-competition laws to protect capitalism. It is not just abusing monopoly power or price fixing which expose wrongdoers to treble damages. Rather any harm to competition, in a way prohibited by antitrust laws, suffices. Health Care antitrust litigation is common, especially in rural areas. The Lanham Act allows companies to sue each other for treble damages in cases of trademark infringement, trademark dilution, and in some cases of false advertising.

The critical portion of a *qui tam* provisions is not the ability to bring action on behalf of the sovereign, the private right of action, but rather the ability for private plaintiffs to receive a bounty for, among other things, providing information to expose the fraud. However, like the False Claims Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act provides in § 922 that the U.S. Securities and Exchange Commission (“SEC”) shall provide an award of between 10 to 30 percent of total monetary sanctions recovered by the SEC (or DOJ) when a whistleblower voluntarily provides original information which exposes a violation of federal securities laws.⁴⁷ This is commonly known as the whistleblower provision. It is similar to the relator provisions of the False Claims Act in terms of the bounty provided but does not allow the whistleblower to bring a lawsuit. Other securities laws provide a private of action when harmed by fraud but would not provide for a whistleblower payment.⁴⁸

Arkansas law provides for a similar type of whistleblower bounty without an explicit *qui tam* provision.⁴⁹ The provision does have the limitation, however, of only applying to fraud against the State of Arkansas rather than fraud against anyone. It is time for Congress to act to remove the limitation of only providing financial incentives in cases brought by a government actor when the government has been harmed.

⁴⁷ U.S. Securities and Exchange Commission, Whistleblower Program available at <https://www.sec.gov/spotlight/dodd-frank/whistleblower.shtml>; *see also* § 21(f) of the Securities Exchange Act of 1934, 17 C.F.R. 240, 249

⁴⁸ *See e.g.* § 10(b) of the Securities Exchange Act of 1934.

⁴⁹ Broderick, 107 COLUM. L. REV. 949, 957 *citing* Ark. Code Ann. §§ 20-77-902, -911(a) (1997).

Robert Mang

10169 Maxine Street, Ellicott City, Md. 21042 – (202) 880-0899 – rmang3@gmail.com

Government resources are often limited but still dwarf what is available to the private sector, both in terms of manpower and subject matter expertise.

There is no question both the creation of RICO and the development of the False Claims Acts arose under very unique circumstances. Dodd Frank, too, provided much sought after financial regulatory reform in the wake of the financial crisis. Yet, the penalties available under both RICO and the False Claims Act are very similar. In addition to criminal penalties, both statutes provide for treble damages, attorney fees, and mechanisms to allow for private enforcement. RICO contains a traditional private right of action, whereas prosecutors have oversight over relator actions brought under the False Claims Act. Discussed above, a variety of other existing laws allow for private enforcement of important public rights and/or mechanisms to provide financial incentives to whistleblowers.

Congress should act to create a new Omnibus Health Care Fraud statute which, while lacking an explicit *qui tam* provision, allows for whistleblowers to receive up to one-third of any recovery through a treble damages provision. The law would also allow recovery of attorney's fees but distinct from what portion a whistleblower may claim. Needless to say, the law would contain criminal penalties, when the government brings an action for fraud committed against individual consumers or private insurance companies, as well as a private right of action allowing for the recovery of treble damages.

Existing RICO laws, state laws and other federal statutes, as well as the False Claims Act, the Anti-Kickback Statute, and the Stark Self-Referral Law more frequently relied on by prosecutors to fight health care fraud are already most effective in policing fraud against the government. The gap in the laws for health care fraud not harming the government must be addressed. Until Congress acts, relying on RICO to address that gap is a powerful deterrent but without the expertise and insider knowledge of whistleblowers, RICO cannot be as effective as the False Claims Act.

Applicant Details

First Name	Robert
Last Name	Mang
Citizenship Status	U. S. Citizen
Email Address	rmangjd@gmail.com
Address	<div> <div>Address</div> <div> <div>Street</div> <div>10169 Maxine Street</div> <div>City</div> <div>Ellicott City</div> <div>State/Territory</div> <div>Maryland</div> <div>Zip</div> <div>21042</div> </div> </div>
Contact Phone Number	202-880-0899

Applicant Education

BA/BS From	University of Maryland-College Park
Date of BA/BS	May 2012
JD/LLB From	The George Washington University Law School
	https://www.law.gwu.edu/
Date of JD/LLB	May 15, 2020
Class Rank	33%
Law Review/Journal	Yes
Journal(s)	Federal Communications Law Journal
Moot Court Experience	No

Bar Admission

Admission(s)	Other
Other Bar Admission(s)	Not yet admitted

Prior Judicial Experience

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

Srour, Dani
sroure@sec.gov
202-551-4166
Gavoor, Aram
agavoor@law.gwu.edu
917-562-9230
Fair, Lesley
lfair@law.gwu.edu

References

John Jared Garth
Associate General Counsel
Amtrak
202-253-4307 | jared.garth@amtrak.com

Presiding Judge Roberto Naraja
Superior Court of the Northern Mariana Islands
670-235-4257 | rnaraja@nmijudiciary.com

Danielle Srour
Senior Counsel
Retail Strategy Task Force
Division of Enforcement
U.S. Securities and Exchange Commission
202-551-4166 | sroure@sec.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 30, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my pleasure to apply for a judicial clerkship in your chambers. I received my law degree with honors from the George Washington University Law School in May 2020. In law school, I served as Executive Editor of my law journal and developed my research and writing skills through a variety of law clerk positions. I worked part-time in each of my last five semesters.

Since graduation, I have been clerking in the Commonwealth of the Northern Mariana Islands. Although still in the United States, learning a system of law which is a little different has been an enriching experience. Seeing the distinctions between the federal rules and the local version has afforded me a better understanding of each. I have really enjoyed both the writing aspects of the position as well as the court's role as a neutral decision maker. I started law school eager to advocate for my client's position but since my internship at the Maryland Court of Appeals, I have been becoming more interested in which interpretation of the law and facts is actually correct.

I am excited for this opportunity to gain more experience with federal law. Please find enclosed my resume, transcript, and writing sample. I have also included letters of recommendation from Professor Gavoor, Professor Fair, and Danielle Srour, an attorney I worked with prior to law school. I also included a copy of my references. I hope to have the opportunity to explain my qualifications further in an interview at your earliest convenience.

Sincerely,

[/s]Robert Mang

Enclosures

Robert Mang

1 Villa De Cruz, PO Box 10,000, PMB 600, Saipan, MP 96950 – (670)-286-4951 – rmang@law.gwu.edu

EDUCATION

The George Washington University Law School -- J.D. with honors, Pro Bono Award: Gold (250+ hours) May 2020

GPA: 3.422 (3.867 Fall 2019) – Business & Finance Law Concentration

Journal: Executive Editor, Federal Communications Law Journal – Vol. 72 (2019-2020)

Courses: Trial Advocacy, Complex Litigation, Federal Courts, Admin Law, Evidence, Criminal Procedure

First-year: Completed 1L Year at the Catholic University of America

University of Maryland, College Park -- B.A. in Criminology and Criminal Justice

May 2012

EXPERIENCE

Superior Court of the Northern Mariana Islands, Presiding Judge Roberto Naraja LAW CLERK Oct. 2020 – Present

- Research and draft decisions; drafted motions and bench memorandum concerning evidentiary questions and those of substantive law

Municipal Securities Rulemaking Board LAW CLERK

Feb. 2020 – July 2020

- Prepared memoranda examining the legislative history of an assortment of MSRB rules from inception to present

Communications Workers of America LAW CLERK

Aug. 2019 – Feb. 2020

- Assisted in drafting a brief for a NLRB hearing concerning Section 7 rights to audio record a disciplinary hearing; as well as a comment submitted in opposition to a proposed rule modifying the election process

Mooney, Green, Saindon, Murphy & Welch, P.C. LAW CLERK

May – July 2019

- Drafted a post-arbitration brief in a dispute involving CBA interpretation after a failure to promote
- Research and analyzed the distinctions between a bill and two proposed amendments which would reform the process for rehabilitating multiemployer ERISA plans

D.C. Office of Human Rights LAW CLERK

Feb. – May 2019

- Drafted investigative documents, reviewed party submissions, and performed fact-specific research for employment discrimination issues under the DC Human Rights Act and the DC Family and Medical Leave Act

U.S. Securities and Exchange Commission, Division of Enforcement SPRING HONORS INTERN

Feb. – April 2019

- In my second internship of the semester, I drafted a district court motion to return recovered funds to harmed investors; drafted action memorandum for commission approval summarizing steps taken and applicable law

Amtrak, Office of General Counsel LAW CLERK

May – Nov. 2018

- Performed legal research concerning employment law issues, contracts, arbitration, and privacy issues
- Draft a brief seeking Rule 11 sanctions against a plaintiff with a settlement offer under Rule 68

The Court of Appeals of Maryland, Chambers of Judge Irma S. Raker (Ret.) INTERN

Jan. – April 2018

- Helped draft an opinion pertaining to a witness being compelled to testify after invoking the Fifth Amendment
- Drafted portions of an opinion considering whether improperly admitted hearsay testimony could be harmless

Mang Photo PROFESSIONAL PHOTOGRAPHER

Nov. 2014 – May 2020

- Provide professional photography services to more than 130 wedding clients in a high-pressure field

U.S. Securities and Exchange Commission, Division of Enforcement ANALYST (9/13-11/14) PARALEGAL (8/12-9/13)

Client site assignment while employed by Convergenz LLC (8/12-3/13) and CACI Inc. (3/13-11/14)

- Reviewed tips received and spotted issues, researched case history, and identified connections to existing investigations in writing memorandum recommending next steps and additional leads to a supervising attorney

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G44899647
Date of Birth: 24-DEC

Date Issued: 01-FEB-2021

Record of: Robert Edward Mang III III

Page: 1

Student Level: Law
Admit Term: Fall 2017

Issued To: ROBERT MANG
264 16TH STREET SE
WASHINGTON, DC 20003-1552

REFNUM:44936327

Current College(s): Law School
Current Major(s): Law

Degree Awarded: J D 17-MAY-2020
Major: Law

WRITING REQUIREMENT MET (6413)
EXPERIENTIAL REQUIREMENT MET

SUBJ NO COURSE TITLE CRDT GRD PTS

NON-GW HISTORY:

2016-2017 Catholic University of America

LAW 6202 Contracts I 3.00 TR
LAW 6203 Contracts II 3.00 TR
LAW 6206 Torts 4.00 TR
LAW 6212 Civil Procedure I 3.00 TR
LAW 6213 Civil Procedure II 3.00 TR
LAW 6216 Legal Research And Writing 2.00 TR
LAW 6217 Introduction To Advocacy 2.00 TR
LAW 6230 Evidence 4.00 TR

Transfer Hrs: 24.00

Total Transfer Hrs: 24.00

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2017

Law School

Law

LAW 6208 Property Glicksman 4.00 A-

LAW 6210 Criminal Law Solove 3.00 B+

LAW 6214 Constitutional Law I Cheh 3.00 B+

Ehrs 10.00 GPA-Hrs 10.00 GPA 3.467

CUM 10.00 GPA-Hrs 10.00 GPA 3.467

Good Standing

THURGOOD MARSHALL SCHOLAR

TOP 16%-35% OF THE CLASS TO DATE

Spring 2018

Law School

Law

LAW 6232 Federal Courts Gavoor 3.00 A

LAW 6250 Corporations Mitchell 4.00 A-

LAW 6268 Employment Law Schoenbaum 3.00 B

Ehrs 10.00 GPA-Hrs 10.00 GPA 3.567

CUM 20.00 GPA-Hrs 20.00 GPA 3.517

Good Standing

THURGOOD MARSHALL SCHOLAR

TOP 16%-35% OF THE CLASS TO DATE

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO COURSE TITLE CRDT GRD PTS

Summer 2018

LAW 6218 Professional Responsblty/Ethic 2.00 A

Fairfax

LAW 6400 Administrative Law 3.00 B

Gavoor

Ehrs 5.00 GPA-Hrs 5.00 GPA 3.400

CUM 25.00 GPA-Hrs 25.00 GPA 3.493

Fall 2018

LAW 6252 Securities Regulation 3.00 B+

Sibay

LAW 6256 Mergers And Acquisitions 2.00 B+

Mahon

LAW 6285 Business Bankruptcy & 3.00 B

Reorg. Mitchell

LAW 6657 Fed Communication Law 1.00 P

Jrl Note

Ehrs 9.00 GPA-Hrs 8.00 GPA 3.208

CUM 34.00 GPA-Hrs 33.00 GPA 3.424

Spring 2019

LAW 6236 Complex Litigation 3.00 B-

Trangsrud

LAW 6266 Labor Law 2.00 B

Babson

LAW 6272 Employee Benefit Plans 2.00 B

Silverman

LAW 6402 Antitrust Law 3.00 B+

Longwell

LAW 6657 Fed Communication Law 1.00 P

Jrl Note

Han

Ehrs 11.00 GPA-Hrs 10.00 GPA 3.000

CUM 45.00 GPA-Hrs 43.00 GPA 3.326

Good Standing

Summer 2019

LAW 6640 Trial Advocacy 3.00 B+

Gilligan

Ehrs 3.00 GPA-Hrs 3.00 GPA 3.333

CUM 48.00 GPA-Hrs 46.00 GPA 3.326

***** CONTINUED ON PAGE 2 *****



Edmundson
University Registrar



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F STREET, NE
WASHINGTON, D.C. 20549-6030-A

DANIELLE R. SROUR
ATTORNEY
DIRECT DIAL: (202) 551-4166

January 28, 2020

Your Honor:

With great enthusiasm I recommend Robert Mang, with whom I worked at the U. S. Securities and Exchange Commission, for a clerkship position in your chambers.

I am an attorney with 20 years of corporate finance experience in private practice, plus 12 years of professional development experience at global law firms and 8 years of government experience. Over the course of my professional career I have mentored, taught, evaluated and worked with hundreds of law students as interns and summer associates as well as with countless young, mid-level and senior lawyers. I have the background to state with confidence that Robert has the intellect, curiosity, analytical abilities and personal skills and qualities to put him at the top of this list.

I have no doubt that Robert will thrive in your chambers and as an attorney. I was consistently impressed by his ability to understand complex financial concepts and their relation to our role at the SEC. He was also impressive in his ability to learn new technologies to help us be more efficient in our work. He voiced his opinion with clarity, orally and in writing, stayed calm under pressure, and synthesized complex information in a useful and practical way. His work was excellent and he was a valued and highly regarded contributor to our team.

Robert is honest and ethical. He has energy and a penchant for spirited debate, and he is a wonderful colleague. Over the years I have written many letters of recommendation but I cannot think of another where I feel as strongly about a law student's potential to excel as an attorney.

I would be happy to speak with you further about Robert's qualifications. My contact information is in the letterhead above.

Sincerely,

[s]*Dani Srouer*

Danielle R. Srouer